

Howell v. City of Zion, et al.
Case No.: 16 CV 3949

EXHIBIT B

**RONALD SCOTT
HOWELL vs CITY OF ZION**

**April 04, 2017
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<p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 ALICE HOWELL, Independent) 5 Administrator of the Estate) 6 of JUSTUS HOWELL,) 7 Plaintiff,) No. 16 CV 3949 8 -vs-) 9 CITY OF ZION, a municipal) 10 corporation, OFFICER ERIC) 11 HILL, (#47),) 12 Defendants.) 13 14 The deposition of RONALD SCOTT, called 15 for examination, taken pursuant to the Federal 16 Rules of Civil Procedure of the United States 17 District Courts pertaining to the taking of 18 depositions, taken before THERESA A. VORKAPIC, a 19 Notary Public within and for the County of Kane, 20 State of Illinois, and a Certified Shorthand 21 Reporter, CSR No. 84-2589, of said state, at 140 22 South Dearborn Street, Chicago, Illinois, on 23 April 4, 2017, at approximately 9:35 a.m. 24 </p>	<p>1 PRESENT: (Continued) 2 3 STETLER DUFFY & ROTERT, LTD., 4 10 South LaSalle Street, Suite 2800, 5 Chicago, Illinois 60603, 6 312-338-0217, by: 7 MS. MARIAH E. MORAN, 8 mmoran@sdrlegal.com, 9 appeared on behalf of Plaintiff; 10 ANCER GLINK DIAMOND BUSH DICIANNI 11 & KRAFTHEFER, 12 140 South Dearborn Street, 13 Chicago, Illinois 60603, 14 312-782-7606, by: 15 MR. THOMAS G. DICIANNI, 16 tdicianni@ancelglink.com, 17 MS. ELIZABETH K. BARTON, 18 ebarton@ancelglink.com, 19 appeared on behalf of Defendants. 20 21 22 23 24 </p>
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<p>1 PRESENT: 2 ACTION INJURY LAW GROUP, LLC, 3 191 North Wacker Drive, Suite 2300, 4 Chicago, Illinois 60606, 5 312-578-9390, by: 6 MR. CARLTON ODIM, 7 carlton@actioninjurylawgroup.com, 8 MR. ANDREW M. STROTH, 9 astroth@actioninjurylawgroup.com, 10 -and- 11 EDWIN F. MANDEL LEGAL AID CLINIC, 12 The University of Chicago Law School, 13 6020 S. University Avenue, 14 Chicago, Illinois 60637, 15 773-702-9611, by: 16 MR. CRAIG B. FUTTERMAN, 17 futterman@uchicago.edu, 18 -and- 19 20 21 22 23 24 </p>	<p>1 ALSO PRESENT: 2 MS. BAHAR T. AZARI, Paralegal, 3 Ancel Glink Diamond Bush DiCianni 4 & Krafthefer; 5 MS. MICA MOORE, 6 MR. ANDREW SOWLE, 7 MR. JEREMY CHEN, 8 University of Chicago Police 9 Accountability Clinic, Law Students. 10 11 12 13 14 15 16 17 18 19 REPORTED BY: THERESA A. VORKAPIC, CSR, RPR, 20 CSR License No. 84-2589 21 22 23 24 </p>

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<p>1 P R O C E E D I N G S 2 (WHEREUPON, the witness was duly 3 sworn.) 4 RONALD R. SCOTT, 5 called as a witness herein, having been first duly 6 sworn, was examined and testified as follows: 7 EXAMINATION 8 BY MR. DiCIANNI: 9 Q. Sir, would you state your name for the 10 record, please. 11 A. First name is Ronald, Ronald, middle 12 initial is R, my last name is Scott, S-c-o-t-t. 13 Q. Mr. Scott, you have given many 14 depositions before I understand, correct? 15 A. Several. 16 Q. If I asked you to estimate, would you 17 be able to do that? 18 A. In excess of 50. I believe less than a 19 hundred. 20 Q. How many times would you say you've 21 testified at trial? 22 A. Approximately 300 times. 23 Q. 300 times. Would that include your 24 time as a law enforcement officer?</p>	<p>Page 5</p> <p>1 questions, as you know, you have to do it 2 verbally. The court reporter is taking down what 3 we talk about today. You know that. 4 A. Yes. 5 Q. If I ask you a question that you don't 6 understand, which could happen, or you don't hear 7 me or whatever it is, please let me know that 8 because we all want to be able to assume that any 9 answer you give is an answer you intended to give. 10 A. Understood. 11 Q. Fair enough? 12 A. Thank you. 13 Q. Okay. I have in front of me your 14 report, which we'll get to in a second. 15 You have a business which I believe is 16 just in your name, Ronald R. Scott? 17 A. Yes, that's correct. 18 Q. And after your name you have MA and MS. 19 What does MA and MS stand for? 20 A. That's for Master of Arts and Master of 21 Science. 22 Q. You have a Master of Arts and a Master 23 of Science? 24 A. Yes, I do.</p>
<p>1 A. Yes, it would. 2 Q. So if we excluded times you testified 3 as a police officer, how many times would you say 4 you testified at trial? 5 A. Between 75 to a hundred, best 6 estimation. 7 Q. Each one of those would have been in 8 some role as a trial consultant of some type? 9 A. Yes. 10 Q. Expert witness? 11 A. Yes, it would have involved a legal 12 proceeding of some sort. 13 Q. Did you act as an expert witness in 75 14 to 100 trials where you've testified? 15 A. Or depositions, but you asked 16 specifically about trials. 17 Q. Yes. 18 A. Yes, I did. 19 Q. You know what we're going to do today, 20 but let me just remind you about a few things. 21 A. Yes, please do. 22 Q. I'm going to ask you questions that 23 pertain to the opinions you've given related to 24 this case, okay. When you respond to my</p>	<p>Page 6</p> <p>1 Q. What is your Master of Arts in? 2 A. Master of Arts is in criminal justice. 3 My Master of Science is in management. 4 Q. When did you get your Master of Arts 5 and where? 6 A. Master of arts was in 1980. Master of 7 Science I believe was 1990. 8 Q. From where? 9 A. Master of Arts was in Anna Maria 10 College, in Paxton, Massachusetts, the Master 11 Science in management was from Lesley University 12 in Cambridge, Massachusetts. 13 Q. That would have been 1990? 14 A. 1990 for the Master of Science. 15 Q. Where did you go to for your 16 undergraduate education? 17 A. Northeastern University. I have a 18 Bachelor of Science cum laude in law enforcement. 19 I also have an Associate in Science in I'm not 20 sure what it is, it's either criminal justice or 21 criminology. 22 Q. What year were you conferred the 23 Bachelor of Science at Northeastern University? 24 A. 1979.</p>

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1 Q. Since graduation in 1979, you have 2 studied further and you've worked in law 3 enforcement and you've worked as a litigation 4 consultant, fair enough?	1 Q. What do they do for a living? 2 A. My youngest son Christopher is a 3 certified public accountant and my oldest son 4 David is a over-the-road truck driver, commercial 5 truck driver.
5 A. Yes.	6 Q. Neither followed you into the law 7 enforcement industry?
6 Q. Your current business Ronald R. Scott, 7 is it incorporated?	8 A. Neither followed me.
8 A. No, it's not. Sole proprietor.	9 Q. I notice on your report your logo has 10 Ronald Scott with a microscope in the middle.
9 Q. It's located in Phoenix, Arizona?	11 A. It's a microscope.
10 A. Yes.	12 Q. Forensic ballistics underneath?
11 Q. 37881 North 10th Street is the address 12 of the business?	13 A. Correct.
13 A. Correct.	14 Q. Is ballistics sort of your primary 15 expertise?
14 Q. Is it also your home?	16 A. No. Shooting reconstruction and crime 17 scenes are my primary expertise, but it does 18 involve some aspects of ballistics and I do do 19 some work with engineers and architects and others 20 that involve just pure ballistics work.
15 A. Yes, it is.	21 Q. Why did you highlight ballistics only 22 in your logo?
16 Q. You have no other business location?	23 A. I don't know. My wife is the artist 24 and she made that logo and I said that's fine.
17 A. None.	
18 Q. Do you have any employees?	
19 A. Myself only.	
20 Q. Do you ever use independent contractors 21 or any type of consultants to help you with cases?	
22 A. I'll refer them to an attorney, but I 23 don't get involved retaining them personally.	
24 Q. Well, I guess I'm not sure you	
1 understood what I meant.	1 Q. She designed it?
2 Do you ever engage other experts to 3 help you evaluate cases that you've been hired to 4 consult on?	2 A. Yes.
5 A. Not personally, no.	3 Q. How long have you been using the 4 logo?
6 Q. Did you do all the work in this case to 7 prepare your report and arrive at your opinions, 8 do it all yourself?	5 A. That logo?
9 A. I did it, yes, myself.	6 Q. That one.
10 Q. Are you married?	7 A. I believe since about 2002.
11 A. I am.	8 Q. Are you a member of any association in 9 which you get referrals for expert witness 10 consultation? Do you know what I'm talking about?
12 Q. And your wife?	11 A. Yes. I've received referrals from 12 members that are associates of mine, but not from 13 the association itself.
13 A. My wife is Maria.	14 Q. So there are and I'm sure you know 15 this, there are organizations or companies really 16 that will advertise themselves as providing expert 17 witnesses in cases. TASA would be an example of 18 that if you are familiar.
14 Q. Is Maria employed outside the home in 15 any way?	19 A. Right.
16 A. Self-employed.	20 Q. Do you get referrals from any company 21 like that?
17 Q. What does she do?	22 A. Yes. I've been contacted by some 23 companies like that.
18 A. She owns a sign and truck lettering 19 business, and she also makes jewelry.	24 Q. Which ones?
20 Q. Children?	
21 A. Two adult children.	
22 Q. Names and ages.	
23 A. David, David is going to be 46 in May. 24 My youngest son is Christopher, '72, he's 44.	

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<p style="text-align: right;">Page 13</p> <p>1 A. TASA was one. There's another one. I 2 believe it's called Consolidated Consultants. I 3 think there's an additional one, DJS Associates. 4 I think they're in Pennsylvania. There is a local 5 agency in Phoenix that contacted me. I haven't 6 received any referrals from them.</p> <p>7 Q. So you've received referrals from the 8 other two. DJS -- other three I should say, TASA, 9 the second one you told me about and then DJS?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. Do all of your cases come through these 12 referral programs?</p> <p>13 A. No. Very, very few.</p> <p>14 Q. Do you advertise?</p> <p>15 A. I have a website.</p> <p>16 Q. Do you do anything else to promote your 17 business?</p> <p>18 A. No. No commercial advertising.</p> <p>19 Q. One of the things that we -- I should 20 have mentioned is you're anticipating my questions 21 so you're talking over me, and we're going to 22 drive her crazy and I tend to talk slowly anyway.</p> <p>23 A. I'll give her a chance to --</p> <p>24 Q. Before she erupts.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. You just haven't done it. You say on 2 your report, you list at the top and we'll have it 3 in a second, sorry about that, the different areas 4 that you provide consultation in, it starts with 5 firearms and ends with trajectory analysis.</p> <p>6 You know what I'm talking about?</p> <p>7 A. Yes.</p> <p>8 Q. You have on here Daubert consultation.</p> <p>9 A. Yes.</p> <p>10 Q. What do you do in what you call a 11 Daubert consultation?</p> <p>12 A. Most of that falls into the category of 13 tool mark methodology, although it can fall into 14 some of the other areas such as the examination of 15 firearms. Some of the cases which I am inquired 16 of involve reviewing conclusions made by crime 17 laboratories or other experts. So one of the 18 areas that I would look if in is what is the 19 methodology that they have done and is it in 20 conformance with the current standards being used 21 in the industry, and then I would provide advice 22 to the counsel as to whether or not there might be 23 an issue they would want to consider exploring.</p> <p>24 Q. So if I'm understanding you correctly,</p>
<p style="text-align: right;">Page 14</p> <p>1 So your website -- in terms of 2 advertisement if we could call it that, your 3 website would be the only way that you market or 4 promote your business?</p> <p>5 A. Yes.</p> <p>6 Q. Do you speak at conferences and 7 seminars for lawyers?</p> <p>8 A. I do if time is available to me, yes.</p> <p>9 Q. What organizations -- lawyer 10 organizations have you given presentations to?</p> <p>11 A. The American Academy of Forensic 12 Sciences. Usually it's a joint session of the 13 jurisprudence section and the engineering section 14 that I would be giving presentations to.</p> <p>15 Q. Any others?</p> <p>16 A. Not recently.</p> <p>17 Q. Did you ever speak to DRI or ITLA, 18 American College of Trial Lawyers, any of these 19 other organizations that put on seminars?</p> <p>20 A. Unfortunately time has not allowed me 21 to do it.</p> <p>22 Q. Have you been invited?</p> <p>23 A. I have. I just haven't had the 24 opportunity.</p>	<p style="text-align: right;">Page 16</p> <p>1 first you would identify some standard that would 2 govern a methodology that would be applicable to 3 whatever opinion or consultation you're reviewing 4 and then determine if whoever rendered that 5 opinion or did that consultation worked 6 consistently with that standard; is that fair to 7 say?</p> <p>8 A. Yes.</p> <p>9 Q. What are you looking for in terms of 10 compliance?</p> <p>11 A. Specifics?</p> <p>12 Q. No, general.</p> <p>13 A. For example --</p> <p>14 Q. Yes, for example.</p> <p>15 A. There are guidelines and the current 16 guidelines are being reviewed at the present time 17 to set new standards for the industry, but the 18 current guidelines as they are set now call for 19 certain methods to be employed in testing and what 20 I'm looking at is have personnel in crime labs 21 doing firearms examinations or crime scene type of 22 work, are they following the current standards as 23 they're currently published in looking to see what 24 conclusions they've reached from what they have</p>

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1 done. So I'm really looking at what the
2 methodology is that they've employed and what
3 conclusions they've reached.

4 Q. So when you do a Daubert consultation,
5 you give an opinion on whether the methodology is
6 reliable, correct?

7 A. That has occurred, yes.

8 Q. You don't necessarily give an opinion
9 on whether the conclusion you agree with or
10 disagree with, you just focus on the methodology,
11 correct?

12 A. Sometimes it could be a combination. I
13 could be looking not only at the methodology but I
14 could also be actually examining the evidence to
15 see what conclusion I've reached. So it could be
16 a combination of both critiquing the methodology
17 and at the same time testifying to my conclusions
18 based upon the generally accepted methodology that
19 I employ.

20 Q. You would fold that all into a Daubert
21 consultation?

22 A. Well, if that's how it was presented in
23 court. I mean, obviously I can't control the
24 questions, but it's happened, yes.

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1 conclusions. In the Frias case, the Frias case
2 wasn't so much methodology as it was presenting
3 testimony regarding some treatises and studies on
4 the aspect of an unintentional or involuntary
5 discharge of a firearm.

6 Q. Were you rendering an opinion about
7 some substantive issue in that case or were you
8 only focusing on whether some other expert's
9 opinions should be admissible based on the Daubert
10 standards, in either one of these cases?

11 A. Right, in the Frias case, I did not
12 testify to anything other than some of the
13 treatises and studies on involuntary discharge,
14 but it did include testifying to some what I call
15 exclusionary opinions based upon the alleged facts
16 of the case and the lack of evidence supporting
17 those facts.

18 In the Babbitt case, the Babbitt case
19 involved critiquing the methodology that employed
20 -- this was a cold case from the 1990s recently
21 brought to trial, so that involved the methodology
22 involved almost 20 years ago at the crime scene,
23 but then reaching my own conclusions based upon
24 the information I had. So that was both.

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1 Q. Can you give me a case reference in

2 which you actually testified in a Daubert hearing?

3 A. I know I've testified in several over
4 the past year.

5 Q. I'm sorry. You did in the past year?

6 A. In the past year I've testified in
7 several.

8 Q. Daubert hearings?

9 A. Yes. Arizona versus Dean Babbitt I
10 know is one, Arizona versus Linda Frias is
11 another. I know there are some others, but I'd
12 have to look at my records.

13 Q. So these are obviously criminal cases,
14 criminal prosecutions?

15 A. Yes. Those are criminal cases.

16 Q. In these cases, you're called on to
17 testify about -- not to render your own opinions
18 but to testify -- well, I suppose it would be your
19 own opinions but not to render your own opinions
20 on the substance of the case but to testify about
21 the methodology employed by some other expert
22 witness; is that fair to say?

23 A. In the Babbitt case, it was a
24 combination of the methodology employed and my own

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21 brought to trial, so that involved the methodology
22 involved almost 20 years ago at the crime scene,
23 but then reaching my own conclusions based upon
24 the information I had. So that was both.

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1 Q. Where were those cases?

2 A. Maricopa County Superior Court,
3 Arizona.

4 Q. Have there been other cases where
5 you've testified as a Daubert expert?

6 A. There have been, yes.

7 Q. You have included your case list at
8 least for the last four years in your report.
9 We'll go over that a little bit later, but would
10 we find cases in that list where you testified as
11 a Daubert consultant?

12 A. I would certainly recall them by
13 looking at that list.

14 Q. All right. We'll do that a little bit
15 later. Let's mark your report as Scott Exhibit 1.

16 (WHEREUPON, a certain document was
17 marked Scott Deposition Exhibit
18 No. 1 for identification, as of
19 04/04/2017.)

20 BY MR. DiCIANNI:

21 Q. In the first part of your report, you
22 discuss -- well, your report is broken down based
23 on different aspects of the consultation that you
24 did in the case, correct?

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1A. Yes.	1 at either myself or a number of experts to retain 2 to review the case file.
2 Q. And in the beginning you talk about 3 your engagement and compensation, and you say you 4 were engaged in this case to examine certain 5 aspects concerning the fatal shooting of Justus 6 Howell by Officer Eric Hill.	3 Q. Is that when he told you he wanted you 4 to rebut Officer Hill's testimony? 5 A. I wasn't actually retained until I 6 think it was probably a few weeks later.
7 What did you consider to be your focus 8 or your engagement in this case?	7 Q. So you were retained for that purpose a 8 few weeks later?
9 A. All the information provided to me 10 which includes reviewing the entire case file, to 11 include visiting the actual scene and making my 12 own measurements and then placing everything into 13 perspective and making my own conclusions as 14 scientifically and reliably as I could.	9 A. Yes.
15 Q. Was it to test the version of the 16 events as described by Officer Hill?	10 Q. And did you have continuing 11 communications with Mr. Rubenstein or any other 12 lawyers representing the plaintiff regarding the 13 case?
17 A. Yes. I'm looking at the physical 18 evidence and the forensic evidence, tangible and 19 intangible, and then I'm comparing it to the 20 source materials which included the version of 21 events by Officer Hill and others.	14 A. I did.
22 Q. So in the end, your mission, I'll put 23 it that way, was to evaluate Officer Hill's 24 version of the events in the way that your	15 Q. Did you have any -- and then you were 16 provided with materials, correct?
1 expertise allows you to do, correct?	17 A. Yes.
2 A. That's a fair statement.	18 Q. Did they provide you -- did any of the 19 attorneys for the plaintiff provide you with any 20 data or other information that you considered in 21 arriving at your conclusions?
3 Q. When were you first engaged in this 4 case?	22 A. Only the source materials that are 23 listed. No verbal data.
5 A. My best recollection is late last year, 6 2016. I don't know the exact month. I'd have to 7 estimate in the October to November area would be 8 approximately correct.	24 Q. That's what I was asking. The answer
9 Q. How were you contacted?	1 is no to that question?
10 A. I believe I was contacted by attorney 11 Cory Rubinstein.	2 A. Correct.
12 Q. Mr. Rubinstein contacted you by 13 telephone, would that be fair?	3 Q. They didn't provide you with any 4 version verbally during some communication or 5 through an e-mail communication that you 6 considered in arriving at your opinions?
14 A. I'm not sure if it was telephone or 15 e-mail.	7 A. No, not outside of the source 8 materials.
16 Q. So there was an initial communication 17 of some type which caused you to have further 18 communications, that's obvious?	9 Q. Your report goes on to discuss your 10 qualifications and we'll talk about your CV a 11 little later.
19 A. Yes.	12 A. Okay.
20 Q. What did Mr. Rubenstein tell you in the 21 first consultation?	13 Q. Then it goes on to discuss the science 14 of shooting reconstruction generally, correct?
22 A. I don't recall verbatim of course, but 23 it involved a police-involved shooting, 24 officer-involved shooting, and they were looking	15 A. Yes.
	16 Q. How would you define shooting 17 reconstruction as a science?
	18 A. Well, it's the application of crime 19 scene analysis, the examination of physical 20 evidence and intangible evidence including time, 21 motion and distance using generally accepted 22 methods employed in the field and then reaching 23 conclusions, scientific conclusions where 24 possible, and where scientific conclusions may not

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<p style="text-align: right;">Page 25</p> <p>1 be as strong as others to clarify that and present 2 them in terms that don't mislead the finder of 3 fact that I would be overstating some aspect of 4 the conclusion.</p> <p>5 Q. Do you have any signed of a 6 certification to do shooting reconstruction?</p> <p>7 A. I voluntarily submit to independent 8 testing through the Collaborative Testing Service. 9 That's called CTS. It involves firearms and tool 10 mark examinations. As far as other 11 certifications, there's none that I'm aware of, 12 different certifications.</p> <p>13 Q. So there's nothing that requires you to 14 have any particular level of competency in the 15 form of a test or something like that and gives 16 you a certificate as a result?</p> <p>17 A. That's correct.</p> <p>18 Q. That doesn't exist or you've never done 19 it?</p> <p>20 A. I think there are some areas that might 21 pick out certain aspects of certain areas like 22 photography or something like that, but nothing in 23 the general aspect of, say, shooting 24 reconstruction, no. There's nothing that I'm</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. While you were a consultant, though, 2 not as a law enforcement officer?</p> <p>3 A. As a private independent consultant.</p> <p>4 Q. Do you know if you're allowed to do 5 shooting reconstruction in Illinois if you're not 6 a licensed investigator in Illinois?</p> <p>7 A. I'm not aware.</p> <p>8 Q. You haven't researched that?</p> <p>9 A. No.</p> <p>10 Q. You're not affiliated with any licensed 11 private investigators in Illinois, correct?</p> <p>12 A. I am not.</p> <p>13 Q. Do you hold any licenses other than a 14 driver's licensing or a fishing licensing, like 15 professional licenses?</p> <p>16 A. No, I do not.</p> <p>17 Q. You mentioned two authorities in your 18 Section 3 on shooting reconstruction; you talk 19 about Peter DeForest, Robert Gaenslen and 20 Dr. Henry Lee and their treatises, and then you 21 talk about Lucien and Michael Haag in their 22 treatise.</p> <p>23 Do you consider those two treatises to 24 be authoritative in the area of forensic sciences?</p>
<p style="text-align: right;">Page 26</p> <p>1 aware of.</p> <p>2 Q. Okay. Is there something in the 3 general forensic sciences, a certification just in 4 the general forensic sciences that you're aware 5 of?</p> <p>6 A. No, I'm not.</p> <p>7 Q. You're no longer a sworn law 8 enforcement officer?</p> <p>8 A. No. I'm retired.</p> <p>10 Q. Are you a licensed private 11 investigator?</p> <p>12 A. No, I'm not.</p> <p>13 Q. Do you have any licenses in Illinois?</p> <p>14 A. I do not.</p> <p>15 Q. Have you ever provided testimony in 16 Illinois?</p> <p>17 A. I have.</p> <p>18 Q. How many times?</p> <p>19 A. I think it's only one or two times.</p> <p>20 Q. Do you remember what those cases were 21 about?</p> <p>22 A. I do not.</p> <p>23 Q. Do you remember when they were?</p> <p>24 A. A long time ago, many years.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes.</p> <p>2 Q. Do you consider them authoritative in 3 shooting reconstruction?</p> <p>4 A. The will book by Haag I do, by the 5 Haags, both Haags. I'm not sure of the DeForest. 6 DeForest is more of a crime scene analyst.</p> <p>7 Q. Do you consider shooting reconstruction 8 sort of a subcategory or subset of the general 9 forensic sciences?</p> <p>10 A. Yes.</p> <p>11 Q. Are there any other publications or 12 treatises that you consider to be authoritative in 13 the area of general forensic sciences?</p> <p>14 A. Yes. There is another book that I 15 commonly refer to. It's a book by Ed Hueske, 16 H-u-e-s-k-e. That book deals with shooting 17 reconstruction; the book by Dr. Vincent DiMaio, 18 Practical Aspects of Gunshot Wounds. There are a 19 number of other books. I don't recall them all, 20 but those are the main ones that I use.</p> <p>21 Q. That you use?</p> <p>22 A. That I use.</p> <p>23 Q. Is Dr. DiMaio's book authoritative on 24 shooting reconstruction?</p>

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1 A. In the sense that it deals with gunshot	1 A. I have them on a disk.	
2 wounds, angles and how to interpret gunshot	2 (WHEREUPON, Andrew Stroth	
3 wounds. He also talks about ammunition, yes, I	3 entered the deposition	
4 think it is.	4 proceedings.)	
5 Q. He talks about various aspects of	5 BY MR. DiCIANNI:	
6 forensic sciences that you employ in shooting	6 Q. That's good because otherwise we were	
7 reconstruction?	7 going to be going through this entire book here.	
8 A. Yes.	8 So if I could ask you to pull those up and if you	
9 Q. What would you consider to be the most	9 want we can take a break while we're doing that.	
10 authoritative book on the overall science, on the	10 So why don't we take a short break.	
11 general -- I'm sorry. Let me rephrase that.	11 (WHEREUPON, a recess was had.)	
12 What would you consider to be the most	12 (WHEREUPON, Andrew Stroth	
13 authoritative source on the specific science of	13 left the deposition proceedings.)	
14 shooting reconstruction?	14 MR. DiCIANNI: We're back on the record.	
15 A. I think the had Haag book, Lucien Haag	15 BY MR. DiCIANNI:	
16 and Michael Haag.	16 Q. When we broke, Mr. Scott, we were	
17 Q. Your report then goes on to discuss	17 talking about the autopsy photos and we were	
18 source materials, and you break it down from	18 hoping that what you brought with you would narrow	
19 A to R.	19 down the universe of photographs that you looked	
20 Is that everything that you reviewed in	20 at in order to determine your opinions, it looks	
21 your study of this case?	21 like you have all the autopsy it photos in your	
22 A. Yes, it is.	22 file; is that correct?	
23 Q. You did not review the entire Lake	23 A. Yes.	
24 County Major Crimes Task Force investigation?	24 Q. So I guess when we get to the point	
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1 A. Whatever is listed is what I received.	1 where the autopsy photos were relevant to your	
2 Q. How was it determined that these would	2 opinion, we'll have to go through them one by one	
3 be the only or the source materials that you would	3 and you can tell us what was important for your	
4 review?	4 decision, okay?	
5 A. This was provided to me by Attorney	5 A. That's okay.	
6 Rubenstein.	6 Q. All right. Your report contains all of	
7 Q. Okay. Obviously because there isn't	7 the opinions that you have in this case?	
8 anything else listed, you didn't ask for anything	8 A. Yes, as far as I know.	
9 more; is that fair?	9 Q. Okay. So we won't have to waste time	
10 A. That's a fair statement.	10 asking about other opinions unless they're in	
11 Q. Did everything on this list have some	11 here, all right.	
12 evidentiary value to your opinions?	12 A. I think that's a fair statement.	
13 A. No, it did not.	13 Q. As I read your report, I would say that	
14 Q. Tell me which ones did have some	14 your -- I would summarize your report and your	
15 evidentiary value to your opinions?	15 opinions as the following and you can correct me	
16 A. By letter? That would be the best way.	16 if I'm wrong. As an overall --	
17 Q. Yes, letter is fine.	17 MR. ODIM: I would object. The report speaks	
18 A. A, B, C, D, E, F, G, H, I, K, L, M, N,	18 for itself. Your summary is your summary.	
19 I'm not sure about O at this point, P, Q and R.	19 MR. DICIANNI: That's fine.	
20 Q. Now, regarding the autopsy photos and	20 BY MR. DiCIANNI:	
21 crime scene photos, you didn't identify which ones	21 Q. The overall opinion is the shooting	
22 and I don't know that there would have been an	22 didn't occur the way Hill says it did, correct?	
23 ability for you to do so, but did you bring those	23 A. Well, that's one of my opinions, yes.	
24 with you?	24 Q. You disagree that Justus Howell turned	

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1 toward Hill in the way Officer Hill described it, 2 correct?	1 A. I'd have to look at the frame numbers. 2 Q. At some point, we'll get to that, and 3 you can correct me on what I have summarized as 4 your opinion.
3 A. That's another opinion, yes. 4 Q. You disagree that Officer Hill fired 5 his shot when he said he did; you believe it was 6 later, correct?	5 Now, your opinions are based on as you 6 explained it in your report the security video and 7 comparison with Officer Hill's testimony, correct? 8 A. That's part of it, yes.
7 A. Correct. 8 Q. Do you disagree that Howell was armed? 9 A. I do not know if he was armed. 10 Q. Okay. You have an opinion about the 11 video and we'll talk about that when we get to 12 that, but you don't have an opinion as to whether 13 he was armed or not? 14 A. That's correct. 15 Q. And overall you believe Hill fired his 16 two shots as shown on the video between frames 281 17 to 285 or even 287; is that fair to say? And let 18 me clarify. The video I'm referring to is the 19 surveillance video from the business that was a 20 short distance away?	9 Q. The autopsy findings regarding the 10 gunshot wound trajectory and angles, correct? 11 A. It that's part of it. 12 Q. The location of the casings? 13 A. Correct. 14 Q. The testimony of Officer Gildea 15 regarding his location?
21 A. I'm not sure I agree with that. 22 Q. What's incorrect about that, about that 23 last statement? 24 A. I know one of my opinions is that a	16 A. Yes. 17 Q. Was there anything else? There's 18 obviously a lot of other information, but in terms 19 of the source materials that you used to derive 20 your opinions, it's those materials, correct? 21 A. Once again, please. 22 Q. Security video in comparison with 23 Officer Hill's testimony? 24 A. That's correct.
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1 shot was fired at or after frame 287. I'm not 2 sure about one of the shots. 3 Q. So you're saying that you believe -- 4 you disagree with the part of my reference -- the 5 part of my summary that referred to frames 281 to 6 285, you would make that 281 to 287 or later? Am 7 I understanding that correctly? 8 A. No. I don't think that's what I wrote 9 in my report. 10 Q. Correct me, then, in what that opinion 11 is as to when Officer Hill fired his two shots as 12 shown on the video. 13 A. Well, I know one of the opinions is 14 that the second shot was fired at or later than 15 approximately frame 287. Another shot was fired 16 prior to that. I don't think I've reached a 17 conclusion as to the sequence of frames in which 18 that shot was fired. 19 Q. So your opinion is the second shot was 20 fired at 287 or later; the first shot you're not 21 rendering an opinion on when it was fired? 22 A. I don't have an opinion as to the 23 specific frame sequence. 24 Q. Do you believe it was after frame 281?	1 Q. The autopsy findings regarding the 2 gunshot wound trajectory and angles? 3 A. I agree. 4 Q. The location of the casings? 5 A. Correct. 6 Q. Officer Gildea's testimony about his 7 location when he heard the gunshots? 8 A. Correct. 9 Q. And is there anything else? 10 A. My personal inspection of the scene. 11 Q. What part of your opinions did your 12 personal inspection of the scene inform? 13 A. I took measurements. 14 Q. In what part of your -- in which of 15 your opinions did those measurements come into 16 play? 17 A. Those measurements come into play with 18 the location of the discharged cartridge cases, 19 referencing the video in relation to the location 20 of Officer Hill and the victim, and just the 21 general overall perspective of being at the scene 22 and placing everything into context. 23 Q. You didn't give us your measurements. 24 Do you have those?

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<p style="text-align: right;">Page 37</p> <p>1 A. They should have been provided to you. 2 You should have those. 3 Q. Maybe I'm wrong. Take a look at your 4 report and let me know if you're in here. I don't 5 recall seeing them. 6 A. They're not in the report. They're on 7 a separate page. 8 Q. I don't think we got that. Do you have 9 that? 10 A. I do. 11 Q. Is that in the form of something you 12 wrote out? 13 A. I wrote it out and it was converted to 14 a PDF and supplied to Attorney Rubinstein. 15 Q. Is it on disk or hard copy? 16 A. I have a hard copy. 17 Q. Did you take any notes in connection 18 with your study here other than measurements? 19 A. Only mental. 20 Q. No written notes? 21 A. No. 22 Q. So the next break I will ask you to get 23 out your measurements, okay? 24 A. Okay.</p>	<p style="text-align: right;">Page 39</p> <p>1 say you couldn't say to a reasonable degree of 2 forensic science certainty that they're valid? 3 A. I think there would be some aspects 4 that I could testify to, but the video is a 5 critical item. 6 Q. Well, you would not be able to talk 7 about whether Hill -- I'm sorry, whether Justus 8 Howell turned in the way Hill described, correct? 9 A. I agree. 10 Q. Would you still be able to give 11 opinions regarding the positioning of the two 12 people at the time of the shooting without the 13 video? 14 A. It would be difficult, but to some 15 extent I think I could give some partial opinions. 16 Q. That you would consider to be 17 reliable? 18 A. Yes. 19 Q. Would you be able to continue to 20 disagree with Hill's testimony -- well, let me 21 rephrase that. 22 You construe Hill's testimony as being 23 that he fired a shot at frame 257, correct? 24 A. That's his testimony, at or about 257.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. The video -- the security video is 2 important to your opinions, correct? 3 A. Yes, it is. 4 Q. If the court were to rule that the 5 video is inadmissible, would you still have a 6 reliable basis for your opinions? 7 A. I don't know how to answer that. I 8 think that's up to the court, but it would be an 9 important item of evidence. 10 Q. I'm not asking you for a legal ruling. 11 You're not an attorney. I understand that. 12 I'm talking about from a forensic 13 scientist perspective where you would make an 14 evaluation about whether your methodologies are 15 reliable and whether your conclusions are reliable 16 based on the materials that you reviewed, if the 17 security video is excluded, are your opinions 18 still reliable? 19 A. Still what? 20 Q. Can you still provide reliable 21 testimony at trial without using the security 22 video? 23 A. I think it would be compromised. 24 Q. To the extent that you would yourself</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. At or about 257, right? 2 A. Yes. 3 Q. And you disagree with that, right? 4 A. Yes, I do. 5 Q. Would you still be able to render an 6 opinion disagreeing with when Hill fired the shot 7 if the video was excluded? 8 MS. MORAN: We're going to object in terms of 9 you're reaching -- you're assuming legal 10 conclusions. 11 MR. DiCIANNI: I am. 12 MS. MORAN: And posturing if the -- positing 13 hypotheticals here. 14 MR. DiCIANNI: First of all, I think we need 15 to clarify who is going to be doing the 16 objections. We can't have two lawyers objecting. 17 MR. ODIM: I'll be doing it. 18 MR. DiCIANNI: No offense. 19 MS. MORAN: None taken. 20 BY MR. DiCIANNI: 21 Q. I'm not asking you how would the court 22 rule. I want to clarify. I'm not asking you how 23 the court would rule on an opinion. I'm asking 24 you from the perspective of a forensic scientist</p>

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1 who holds yourself to a standard in which you will	1 BY MR. DiCIANNI:	
2 only give opinions if the source materials and the	2 Q. Go ahead.	
3 methodology is reliable, correct?	3 A. Could I have it once again, please.	
4 A. Yes.	4 MR. DiCIANNI: Would you read it back.	
5 Q. That's all I'm asking about. Not how	5 (WHEREUPON, the record was read by	
6 the court would rule.	6 the reporter.)	
7 A. Right.	7 BY MR. DiCIANNI:	
8 Q. So if the video were excluded, would	8 Q. Do you understand the question?	
9 you still have enough of a basis to disagree with	9 A. I do. The autopsy positions will be	
10 Officer Hill as to when you believe he says he	10 necessary.	
11 fired the shots?	11 BY MR. DICIANNI:	
12 MR. ODIM: Again, we'll object here. The	12 Q. For your opinions?	
13 court's ruling on admissibility has nothing to do	13 A. Yes.	
14 with the expert's review of materials that inform	14 Q. If the court were to find that your	
15 his opinion.	15 conclusions based on the location of the casings	
16 MR. DiCIANNI: Okay. I don't agree, but go	16 was inadmissible, how would that affect your	
17 ahead.	17 opinion regarding when Hill fired the shots?	
18 BY THE WITNESS:	18 MR. ODIM: Tom, just to make this efficient,	
19 A. The video would be necessary.	19 are you going to --	
20 BY MR. DiCIANNI:	20 MR. DiCIANNI: You can have a standing	
21 Q. To disagree with a version of when he	21 objection.	
22 fired the shots given by Officer Hill, is that	22 MR. ODIM: Standing objection.	
23 what you're saying?	23 MR. DiCIANNI: I acknowledge a standing	
24 A. I disagree and I agree. There are some	24 objection to this line of questioning.	
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1 aspects of that I could make opinions on using the	1 MR. ODIM: Okay.	
2 other source materials.	2 MR. DiCIANNI: Could you read back the	
3 Q. Using the location of the casings?	3 question.	
4 A. Using the deposition demonstration of	4 (WHEREUPON, the record was read by	
5 Officer Hill as to how Mr. Howell turned.	5 the reporter.)	
6 Q. So you still feel like you could give a	6 BY THE WITNESS:	
7 reliable opinion disagreeing with Hill's testimony	7 A. I would have to reconsider those	
8 about when he fired the shot even without the	8 opinions.	
9 video?	9 BY MR. DiCIANNI:	
10 A. Yes.	10 Q. Now, in part five you explain your	
11 Q. And whether Howell turned or didn't	11 opinion on why the security video, you call it the	
12 turn, you don't believe that Hill fired at the	12 surveillance video, same thing, refutes Officer	
13 time Howell would have been turned?	13 Hill's testimony that Justus Howell turned at some	
14 A. That's correct.	14 point during the chase; is that correct?	
15 Q. If the court were to rule that you	15 A. Yes.	
16 don't have -- for whatever reason your conclusions	16 Q. You say you don't see a turn in the	
17 regarding the autopsy findings and the positioning	17 video, at least when Officer Hill says he saw the	
18 based on the angles were excluded, how would that	18 turn, you don't see a turn there; is that correct?	
19 affect your opinions?	19 A. That's right.	
20 MR. ODIM: Objection. Same as stated before.	20 Q. That's right around 257, correct?	
21 You're assuming matters that have nothing to do	21 A. Yes.	
22 with what an expert can rely on in rendering his	22 Q. I want to talk about what expertise you	
23 opinion, and you're asking this expert to also	23 employ in watching a video.	
24 give an opinion regarding the law.	24 Can't a jury make the same judgment	

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<p style="text-align: right;">Page 45</p> <p>1 that you made as to whether there's a turn or not? 2 MR. ODIM: Objection, speculation about what 3 a jury can do. He's not a jury. 4 BY MR. DiCIANNI: 5 Q. Go ahead. 6 A. I'm sure a jury can see the video and 7 see what's in the video whereas I'm looking in the 8 video and I'm looking at details of time, motion 9 and distance. I'm looking at postures and 10 orientation. I'm looking at how a person is 11 holding a gun, how a victim is positioned. I'm 12 referring back to the autopsy findings what the 13 trajectory was. I'm placing everything together 14 in the totality of the circumstances and utilizing 15 expertise in shooting reconstruction, trajectory 16 analysis, and placing that into the perspective to 17 draw scientific interpretations from it. 18 Q. So are you saying that your opinion in 19 part five that Hill's description of how turning 20 at about frame 257 is not based on merely the 21 review of the video, but it also incorporates what 22 you know from the autopsy findings and other 23 source material; is that correct? 24 A. I don't think I understand what you're</p>	<p style="text-align: right;">Page 47</p> <p>1 into part five without expressing them? 2 A. Correct. 3 Q. How do you -- you're aware that other 4 people besides Hill did see a turn at 257? Are 5 you aware of that? 6 A. I'm not. 7 Q. Would you agree that not having the 8 knowledge of the autopsy findings as you did 9 reasonable people could disagree that 257 doesn't 10 show a turn? 11 MR. ODIM: Objection. Speculation. 12 BY THE WITNESS: 13 A. I don't know what other reasonable 14 people could determine, but they could reach their 15 own conclusion. 16 BY MR. DiCIANNI: 17 Q. Certainly, right. 18 A. Sure. 19 Q. And without the knowledge of the 20 autopsy and the application of that knowledge to 21 your interpretation of the video, you would not 22 conclude merely by looking at the video that at 23 257 Justus Howell did not turn? 24 A. Once again, please.</p>
<p style="text-align: right;">Page 46</p> <p>1 asking there. 2 Q. My question is what science are you 3 applying when you tell us that you can tell what's 4 on a video better than the average person and you 5 said you're also incorporating your knowledge of 6 what was discovered at the autopsy. 7 So my follow-up question is you're not 8 saying from the video alone you could tell that 9 Hill did not turn at or around 257; you're saying 10 that based on the video plus other information 11 that you gained in reviewing the file you conclude 12 that he didn't turn at 257? 13 A. Yes. 14 Q. So it's not the video alone that leads 15 you to the conclusion that he didn't turn at 257, 16 correct? 17 A. That's a fair statement. 18 Q. That's different from what your report 19 says, correct? 20 A. I don't believe it is. 21 Q. Well, in part five you don't reference 22 any autopsy findings, right? 23 A. Not in part five. 24 Q. So you're imputing the autopsy findings</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. DiCIANNI: Would you read it back. 2 (WHEREUPON, the record was read by 3 the reporter.) 4 THE WITNESS: Please once again. 5 (WHEREUPON, the record was read by 6 the reporter.) 7 BY THE WITNESS: 8 A. Well, I think it's just looking at the 9 video at that point comparing it to Officer Hill's 10 demonstration at the deposition. 11 BY MR. DiCIANNI: 12 Q. So you're saying looking at the video, 13 you are -- looking at the video alone allows you 14 to say based on your shooting reconstruction 15 expertise that Justus Howell did not turn in the 16 way that Hill described it at 257, correct? 17 A. That's not quite accurate. That's not 18 what I said. 19 Q. Correct me. 20 A. How Officer Hill demonstrated at his 21 deposition and his relationship in regards to the 22 positioning, where he was in relation to the 23 direction they were both moving at the time and 24 how Mr. Howell turned at 257 and it was at that</p>

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<p style="text-align: right;">Page 49</p> <p>1 point that he saw certain aspects of Mr. Howell's 2 activities. When I compare that to the video, I 3 did not see what Officer Hill is testifying to.</p> <p>4 Q. You're not looking at it from the same 5 perspective, correct?</p> <p>6 A. I'm looking at what Officer Hill is 7 testifying to and looking at the same frame and 8 I'm not seeing what he's describing nor do I see 9 what he physically demonstrated.</p> <p>10 Q. But you're not looking at it from his 11 perspective, are you?</p> <p>12 MR. ODIM: Objection. Foundation.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I'm looking at the video for what it 15 is. I'm looking at Officer Hill's demonstration 16 and I'm reading his transcript, and I do not see 17 agreement between the video and his deposition 18 testimony and his demonstrative exhibit.</p> <p>19 BY MR. DiCIANNI:</p> <p>20 Q. You can arrive at that conclusion even 21 without applying the knowledge that you have from 22 the autopsy findings?</p> <p>23 A. Yes.</p> <p>24 Q. So you can't rule out that Justus</p>	<p style="text-align: right;">Page 51</p> <p>1 and elbow is sil 2 residence and is shown to be in front of and to 3 the right of his torso and at a right angle to the 4 ground plane. In frame 256 Justus Howell's right 5 arm from his shoulder to his hand is positioned 6 nearly straight downward toward the grounds and 7 slightly out front of his body and this continues 8 to frame 257."</p> <p>9 So my question was you conclude that 10 Howell didn't turn the way Hill described it by 11 comparing 256 to 257?</p> <p>12 A. That's correct.</p> <p>13 Q. I don't mean to beat a dead horse. 14 You're refuting Hill's description of 15 the turn merely based on the video?</p> <p>16 MR. ODIM: Objection. That's not his 17 testimony.</p> <p>18 MR. DiCIANNI: I think it was.</p> <p>19 BY MR. DiCIANNI:</p> <p>20 Q. Is that correct? You can answer. He 21 can object, but he's not telling you not to 22 answer.</p> <p>23 A. I didn't know if the objection was 24 finished.</p>
<p style="text-align: right;">Page 50</p> <p>1 Howell made some kind of a turn at 257 without 2 applying the autopsy findings but what you can say 3 is that he didn't turn in the way Hill described 4 it; is that correct?</p> <p>5 A. That's a fair statement.</p> <p>6 Q. According to your report, you arrive at 7 your conclusion that disputes Hill's description 8 of the turn from comparing frame 256 to 257; am I 9 reading that correctly?</p> <p>10 A. What page, please?</p> <p>11 Q. It's Page 10.</p> <p>12 A. Any specific area or the whole page?</p> <p>13 Q. I'll read it. This would be the second 14 paragraph under B, little i: "Frame 257 depicts 15 Officer Hill located just off the concretes 16 walkway which is in front of the Spaeth's building 17 and it shows Officer Hill has stepped onto the 18 asphalt driveway surface while Howell is running 19 south to southeast several feet before reaching 20 the tree in the front yard of the White residence 21 at frame 257, and multiple frames preceding this 22 clearly show that Justus Howell was constantly 23 facing forward in the direction that he is moving. 24 His right brachium and upper arm between shoulder</p>	<p style="text-align: right;">Page 52</p> <p>1 Yes. It's my review of the video at 2 that frame in comparison to Officer Hill's 3 testimony at that very same frame.</p> <p>4 Q. I want to ask you about the science 5 of -- forensic science aspect of looking at a 6 video.</p> <p>7 What part of forensic science 8 does reviewing a video and interpreting it fall 9 under?</p> <p>10 A. Well, there is forensic video experts. 11 I'm looking at the detail in the video. I'm 12 looking at the motion, the time, postures, 13 movement.</p> <p>14 Q. What do forensic video experts do?</p> <p>15 A. They can enhance videos, slow them 16 down, create slow motion. I'm not sure exactly 17 what it is they can do in totality, but they can 18 do things that are above and beyond.</p> <p>19 Q. They can talk about distortions in the 20 video from reality, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Caused by the camera, caused by other 23 factors, correct; they do that?</p> <p>24 A. I believe so.</p>

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1 Q. Is there any branch of forensic science	1 Q. Otherwise a jury can just -- anybody
2 that allows somebody to just look at a video, look	2 can just tell A shot B, right. Nevermind.
3 at how people are moving, timing, sequence and	3 Rhetorical question.
4 interpret what's going on in that video?	4 A. Okay.
5 A. I'm not sure of a specific branch.	5 Q. Let's take a look at 256 and then 257.
6 Q. Is there any study or any treatise	6 MR. ODIM: Tom, let's go off for a quick
7 or anything at all you can point me to, any source	7 second.
8 you can point me to that describes the appropriate	8 (WHEREUPON, discussion was had off
9 use of video in forensic shooting reconstruction?	9 the record.)
10 A. There have been some studies placed out	10 MR. ODIM: Back on the record.
11 on video regarding such as with dash cams or body	11 BY MR. DICIANNI:
12 cameras, bank robberies and the like, which can be	12 Q. Take a look at 256 and then let's go to
13 used to draw certain data from.	13 257.
14 Q. If a video shows A shooting B, is an	14 You don't see a difference between 256
15 appropriate application of forensic science to	15 and 257?
16 testify from looking at that video I could tell	16 MR. ODIM: Objection. Is that a question?
17 that A shot B?	17 MR. DICIANNI: Yes.
18 A. It's possible.	18 THE WITNESS: I didn't anticipate the
19 Q. What makes it possible?	19 comparison.
20 A. It's possible. You might see a muzzle	20 Can we go back to 256?
21 flash. You might see the person fall down. You	21 BY MR. DICIANNI:
22 could see a cartridge case.	22 Q. Yes. Go back to 256.
23 Q. As a forensic scientist, you would be	23 Now that's 256, and is it your opinion
24 explaining areas of forensic science that are	24 that he's running forward at that point?
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1 demonstrated in that video such as muzzle flash?	1 A. Yes, it is.
2 A. That would be one, yes.	2 Q. Now let's go to 257. You don't see a
3 Q. In the absence of some explanation of	3 difference there?
4 some forensic science conclusion in the video, is	4 A. I see a difference.
5 it appropriate -- is that an appropriate	5 Q. Doesn't it look that more of his back
6 application of forensic science to just say what's	6 is facing the camera than in 256?
7 on the video?	7 A. I don't see a significant difference.
8 MR. ODIM: Objection. Foundation.	8 Q. You don't?
9 Multi-part question.	9 A. I do not.
10 BY THE WITNESS:	10 Q. Isn't his right arm extended out from
11 A. I think we could rely on other	11 his body in 257?
12 information such as medical information.	12 A. Yes, it is.
13 BY MR. DICIANNI:	13 Q. Do you see the white right there?
14 Q. Okay. I'm not questioning it. I'm	14 A. Yes.
15 just questioning if a video sees A shooting B and	15 Q. That's a gap between his arm and his
16 there's no question about muzzle flash, is it an	16 torso, correct?
17 appropriate application of forensic science for	17 A. Yes, it is.
18 you to get on the stand and testify from my review	18 Q. Isn't that different from 256?
19 of the video, A shot B?	19 A. Yes, it is.
20 A. Additional data is needed.	20 Q. But you disagree that that demonstrates
21 Q. Yes, okay. Additional clarification of	21 a turn in the way that Officer Hill described it?
22 what's on the video based on forensic science	22 A. That's correct.
23 conclusions; is that correct?	23 Q. But you don't disagree that it
24 A. Yes.	24 demonstrates a turn?

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<p style="text-align: right;">Page 57</p> <p>1 A. I don't think it's a turn. 2 Q. You don't think it's a turn? 3 A. No, I do not. 4 Q. Tell me everything you base that 5 on. 6 A. Mr. Howell is running southeast. 7 Officer Howell is moving directly south. 8 Q. Officer Hill. 9 A. I'm sorry. Officer Hill is moving 10 south. So there is an orientation of Mr. Howell 11 moving to the southeast in relation to this camera 12 that I see that is showing some of his back, but 13 not of a result of a turn. 14 Q. Well, tell me how does running 15 southeast reveal more of his back than what, than 16 running straight south? 17 A. The camera is facing east. If you look 18 at Officer Howell (sic), you'll see that you only 19 see his right side because he's facing directly 20 south. When I look at Mr. Howell who is running 21 southeast, he's running away from the camera at an 22 angle and so his back portion is going to be 23 showing more to the camera by virtue of the 24 compass direction in which he's moving.</p>	<p style="text-align: right;">Page 59</p> <p>1 Did you come to that conclusion merely 2 by looking at the video? 3 A. Yes. 4 Q. What forensic shooting reconstruction 5 expertise did you apply in arriving at that 6 conclusion? 7 A. I'm looking at the contrast of a silver 8 or chrome pistol to see that object in this 9 victim's hand. I can't see it. 10 Q. Are you ruling out that there is a -- 11 you can't see it, but are you ruling out or are 12 you saying that the video demonstrates that he 13 doesn't have a gun in his hand? 14 A. I'm not saying that. 15 Q. You're just saying it can't be seen? 16 A. Correct. 17 Q. Is the only forensic science principle 18 or forensic science conclusion that you're 19 applying here to determine that the silver Kimber 20 can't be seen in his hand that you don't see any 21 reflections? 22 A. I don't see any object or reflection. 23 Q. Have you done any studies regarding 24 what kind of reflection a silver Kimber like this</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Let's go back to 256. 2 So in 5/100ths or 6/100ths of a second, 3 merely by running in a southeasterly direction 4 more of his back is going to be revealed in those 5 two frames? 6 A. I don't see any difference in the 7 amount of his back. 8 Q. You don't? 9 A. No, I don't. 10 Q. If we were to be able to blow those up 11 and do a measurement, a north-south measurement of 12 his back that showed a difference in how much of 13 his back is facing the camera, would you 14 disagree -- would you agree with us then that 15 there is a difference in 256 and 257? 16 MR. ODIM: Objection. That's inappropriate 17 hypothetical. 18 BY THE WITNESS: 19 A. I would be willing to look at them and 20 reconsider. 21 BY MR. DiCIANNI: 22 Q. Okay. Thank you. 23 You go on in part five to say that the 24 silver Kimber cannot be seen in the video.</p>	<p style="text-align: right;">Page 60</p> <p>1 one would show in a video like this? 2 A. Not studies. 3 Q. Have you done anything that would 4 provide you with some objective evidence that if 5 there was a gun in his hand, silver Kimber in his 6 hand, some reflection would be seen? 7 A. I don't know if I have an actual 8 estimate of videos in which people have been 9 carrying firearms of different color, but I have 10 seen silver-colored firearms. 11 Q. Have you seen silver-colored firearms 12 in a video that is similar to this one? 13 A. Yes, when you say similar, this is 14 unique to itself. 15 Q. It is unique to itself, isn't it? 16 A. Yes. 17 Q. You can't really come to a conclusion 18 that he's not carrying a silver Kimber because you 19 don't see it in this video based on your review of 20 other videos, correct? 21 A. Correct. 22 Q. What would be some of the other -- some 23 of the factors that might affect whether a 24 reflection would be shown?</p>

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1 A. Well, I think the best answer I could
2 give to that is I would either see it or I
3 wouldn't see it, and I just can't see it.
4 Q. Would the location of the sun matter?
5 A. Yes.
6 Q. Would the time of the day matter?
7 A. Yes.
8 Q. Would the camera's ability to pick up a
9 reflection and not have that distorted in some way
10 matter?
11 A. I think that's an aspect that could be
12 considered.
13 Q. And you didn't consider any of those
14 factors in this case?
15 A. Well, I've seen other objects in this
16 video that do reflect.
17 Q. Like what?
18 A. Well, we can see the reflection of the
19 window of that motor vehicle parked on the right
20 side. We can see the frame of the window of
21 Spaeth's Woodworking, both the left large window.
22 We can see all these vehicles from the front with
23 the headlights. We can see the chrome. We can
24 see the white house, and in the part of the video

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1 we'll see Officer Gildea's badge actually flash.
2 Q. That would be a function of a
3 particular light hitting it at that particular
4 time, right?
5 A. I agree.
6 Q. None of which you can say the same type
7 of light would have would have hit the gun in this
8 video?
9 A. All I can see is say is I cannot see a
10 silver object or a reflective object in his hand.
11 Q. You're probably familiar with the gun
12 itself, but you've studied that type of gun?
13 A. I'm familiar with that firearm.
14 Q. How long is it?
15 A. I believe the overall length is about
16 four inches.
17 Q. That's the length?
18 A. It would be from the grip, the bottom
19 part of the grip to the front of the muzzle.
20 Q. How high is it?
21 A. I'd have to look at my notes.
22 Q. Well, from your knowledge? You have
23 notes on that?
24 A. I do.

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1 Q. I thought you didn't have notes.
2 A. I didn't take notes at the scene. I
3 do --
4 Q. What do you mean?
5 A. I didn't take notes at the scene was
6 the question you'd asked me.
7 Q. No. I asked you if you had any notes.
8 MR. ODIM: Objection. I heard exactly what
9 he told you. You asked him about the scene when
10 he went up to take measurements.
11 BY MR. DiCIANNI:
12 Q. Well, then I'll ask you now.
13 During the course of your study in this
14 case, did you take notes?
15 A. I printed out reference material.
16 Q. Did you take notes?
17 A. Written notes?
18 Q. Yes.
19 A. No.
20 Q. So you have some reference material
21 that on the silver Kimber?
22 A. Yes.
23 Q. And that's what you would refer to?
24 A. Yes.

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1 Q. And apart from looking at that right
2 now, you can't tell me the height of the gun?
3 A. Given that it's an estimate,
4 approximately three to three-and-a-half inches.
5 Q. It's a tiny gun, right?
6 A. It's very small.
7 Q. Justus had big hands, right?
8 MR. ODIM: Objection. Foundation.
9 BY MR. DiCIANNI:
10 Q. Did you look at the autopsy photographs
11 to determine whether Justus's hands -- how much of
12 the gun would have been shielded from any light
13 that might reflect off of it by --
14 MR. ODIM: Objection, foundation again.
15 Sorry.
16 MR. DiCIANNI: I'm asking if he did it.
17 Objection foundation? What do you mean objection
18 foundation? I'm asking him if he did something.
19 What foundation do you want for that?
20 MR. ODIM: How about the measurement of his
21 hands?
22 MR. DiCIANNI: That's what I'm asking him.
23 MR. ODIM: How --
24 MR. DiCIANNI: I'm asking him if he did it --

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<p style="text-align: right;">Page 65</p> <p>1 all right. Let's take a break. 2 MR. ODIM: Okay. Let's do that. 3 (WHEREUPON, a recess was had.) 4 MR. DiCIANNI: Could you read back the last 5 question. 6 (WHEREUPON, the record was read by 7 the reporter.) 8 BY MR. DiCIANNI: 9 Q. You can answer. 10 A. I did not. I would have hoped that 11 would have been done at the autopsy by the 12 officers, but I haven't read any source materials 13 to that effect. 14 Q. You would hope that they would do it in 15 the investigation to confirm or refute the 16 testimony by Hill that Howell was carrying a gun, 17 right? 18 A. Officer Hill described and demonstrated 19 how it was done. Certainly I think that could 20 have been done at the autopsy. 21 Q. What I'm referring to is you wish the 22 investigation had done something to either confirm 23 or refute that Howell was carrying a gun based on 24 a lack of reflection in the video; is that what</p>	<p style="text-align: right;">Page 67</p> <p>1 BY THE WITNESS: 2 A. That I did not see the gun? 3 BY MR. DiCIANNI: 4 Q. Yes. 5 A. Well, if I saw the gun I would report 6 it. I'm reporting what I can see and what I 7 cannot see that's an important aspect of this 8 shooting. 9 Q. Whether you can see a gun in Howell's 10 hand in the video doesn't affect your opinion on 11 whether he turned or not, right? 12 A. Correct. 13 Q. And it doesn't affect your opinions on 14 the positioning of the two people at the time the 15 shots were fired, right? 16 A. I agree. 17 Q. And it doesn't affect your opinion 18 regarding your disagreement with when Hill fired 19 the shots, correct? 20 A. Correct. 21 Q. So what significance does it have to 22 your opinions? It's just an independent opinion? 23 A. I'm reporting what I see. In this case 24 I'm reporting what I don't see. I would report</p>
<p style="text-align: right;">Page 66</p> <p>1 you're saying? 2 MR. ODIM: Objection. That was not his 3 testimony. 4 BY THE WITNESS: 5 A. I don't agree with the term refute. 6 What I would like to see is there is a version of 7 events, a simple matter of placing the gun with 8 the precautions, of course, not to transfer DNA 9 and in the person's hands and taking some 10 photographs and document what it would look like 11 according to the way Officer Hill described. That 12 would have been appropriate to do. 13 BY MR. DiCIANNI: 14 Q. What significance does the opinion that 15 you can't see the gun in Howell's hand have on 16 your opinions in this case? 17 MR. ODIM: Objection. Misstates the 18 evidence. There's no testimony that there was a 19 gun in his hand. 20 MR. DiCIANNI: Would you read back the 21 question. 22 (WHEREUPON, the record was read by 23 the reporter.) 24 MR. ODIM: Sorry.</p>	<p style="text-align: right;">Page 68</p> <p>1 either or. 2 Q. You could report a lot of things that 3 you see or don't see, but you chose to report that 4 particular one. 5 Why is that significant to your 6 opinion? 7 MR. ODIM: I object. You've been beating 8 this dead horse. He had has not been asked to 9 give an opinion about the existence of this gun or 10 nonexistence. So it's outside the task that he 11 was given. 12 BY MR. DiCIANNI: 13 Q. So you weren't asked to give an opinion 14 on whether Howell is carrying a gun. 15 Why did you render an opinion on 16 whether the video shows Howell carrying a gun? 17 A. I can see Officer Hill's gun. 18 Q. That's a different question. 19 A. I can see a gun. I can't see a silver 20 object or metallic object in the hands of 21 Mr. Howell. 22 Q. That opinion that you can't see a gun 23 in his hand in the video doesn't have any 24 relevance to any of the other opinions that we've</p>

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<p style="text-align: right;">Page 69</p> <p>1 discussed; counsel has just said on the record 2 that you weren't asked to give that opinion. 3 Are you only giving that opinion as 4 a means of attempting to attack Hill's 5 credibility? 6 A. No. 7 Q. Doesn't the fact that you gave an 8 opinion that's contrary to Hill's testimony and 9 you that you weren't even asked to give, doesn't 10 that indicate a bias on your part against Officer 11 Hill? 12 A. Not at all. 13 Q. You disagree? 14 A. I disagree. Strongly disagree. 15 Q. Why didn't you discuss any of the 16 factors in your report that could have prevented 17 you from seeing a gun even if he was carrying it? 18 A. I don't understand that question. 19 Q. We talked about Howell if he had big 20 hands, it could have completely covered the gun 21 from any light might have reflected off of it, 22 correct? 23 A. Correct. 24 Q. Okay. And you didn't do any reflection</p>	<p style="text-align: right;">Page 71</p> <p>1 A. That's one aspect, correct. 2 Q. All right. And wouldn't it be a 3 thorough forensic evaluation to also say I don't 4 see a gun, however, there are reasons why I might 5 not see a gun and list some of those factors? 6 Wouldn't that be a thorough forensic evaluation to 7 make? 8 A. I think that opens that up to 9 possibilities that could go -- endless 10 possibilities. What I can't see is I cannot see a 11 gun. That's my conclusion from looking at the 12 video. 13 Q. Right, but there are forensic 14 evaluation as that have to be made that could 15 explain a disagreement between what's shown on the 16 video and what somebody testified to, right? 17 A. Yes. 18 Q. That's what you're supposed to do in a 19 forensic evaluation, correct? 20 A. Not necessarily. 21 Q. Not necessarily unless your mission is 22 to refute somebody's testimony as opposed to 23 independently making an evaluation, right? 24 A. Again, you're using the term refute</p>
<p style="text-align: right;">Page 70</p> <p>1 tests on this kind of a gun, correct? 2 A. Correct. 3 Q. It's a small gun, correct? 4 A. It's a small gun. 5 Q. Why didn't you include -- it doesn't 6 really have a sharp silver -- it's sort of a matte 7 finish, isn't it? 8 A. Yes. 9 Q. It's a brushed silver kind of? 10 A. It's not shiny. 11 Q. You say in your report that I can't see 12 a gun in his hand, but you don't discuss any of 13 the factors that could have prevented you from 14 seeing a gun if he had gun. 15 Why not? 16 A. I certainly have some thoughts as to 17 why I can't see a gun. 18 Q. Why wouldn't you put that in your 19 report? 20 A. Because there's other possibilities. 21 Q. Well, there is a possibility that any 22 one of those factors or all of those factors that 23 I just mentioned could have prevented the 24 reflection of a gun in the video, correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 testimony, and that's not role in this case. 2 My role in this case is to look at the 3 evidence as I see it. If it agrees with the 4 testimony, that's fine. If it refutes it, that's 5 the way it is. 6 Q. You didn't see anything that could be 7 interpreted as a gun in Howell's hand? 8 A. I did not. 9 Q. What about the way he's running? Does 10 that suggest to you he's carrying something in his 11 right hand? 12 A. I can't tell. 13 Q. You say yourself in your report that 14 when he's running for the most part his right arm 15 is down facing the ground, right? 16 A. I can see the -- yes. 17 Q. Not facing the ground, extended towards 18 the ground? 19 A. From the brachium, shoulder to the 20 elbow, I can see that. 21 Q. Okay. And when people run, normally 22 they run with their arms rotating back and forth? 23 MR. ODIM: Objection, foundation. 24 BY MR. DiCIANNI:</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. Well, I'm asking you. 2 A. Normally. 3 Q. Wouldn't it suggest to you that he's 4 running with his right arm down as opposed to 5 rotating back and forth that he's carrying 6 something in his right hand? 7 A. It's possible. 8 Q. Why didn't you consider that, though, 9 in your report? 10 A. Well, I can't see anything in the 11 video. 12 Q. Well, I know, but there's other 13 explanations for why you can't see anything and 14 there's something else that could suggest that he 15 is carrying something in his right hand, none of 16 which you put in your report? 17 A. I did not say in my report that he's 18 not carrying anything. 19 Q. Okay. All right. You agree with 20 counsel that you were not asked to talk about 21 whether he had a gun in his right hand or whether 22 the video shows that he has a gun in his right 23 hand, correct? 24 A. Once again.</p>	<p style="text-align: right;">Page 75</p> <p>1 that's to the right of it. 2 Couldn't that be a reflection off his 3 gun? 4 A. I don't see that. 5 Q. Why not? 6 A. I see a vertical fence post. 7 Q. Next to the fence post, you don't see 8 the white dot? 9 A. I see the two white dots which indicate 10 to me that it's his pants legs. 11 Q. You think that's his pants leg? 12 A. Yes, I do. 13 Q. If his arm was extended all the way 14 down, that's where his right hand would be, 15 wouldn't it? 16 A. I don't see his right hand. 17 Q. I know, but if it were extended down 18 all the way, that's about where or almost exactly 19 where his right hand would be, correct? 20 A. If it's there, it's blocked by that 21 vertical post. 22 Q. If what's there it's blocked by the 23 vertical post. 24 A. His arm and hand.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. You agree with counsel who said that 2 you weren't even asked to evaluate whether the 3 video shows that he has a gun in his right hand? 4 A. Counsel never asked me to look for a 5 gun. 6 Q. You do say you can see a gun in Officer 7 Hill's hand? 8 A. Yes. 9 Q. Before I get into that, let's show 212 10 to 214 and then we'll -- one at a time. 11 213, you see where his right arm should 12 be located, you can't see it completely because of 13 the fence in the way, but the white little dot 14 here below the -- about two thirds of the way up 15 from the bottom fence post, that's not a post, 16 what do you call the vertical -- 17 A. That's actually the sidewalk you're 18 pointing to. 19 Q. That's the sidewalk? You think that's 20 the sidewalk? 21 A. This is the sidewalk right here. 22 Q. That's the sidewalk, but I'm referring 23 to this right here. That's above the sidewalk. 24 That's about the height of the middle of this car</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. His arm. Well, couldn't this brown 2 part here or the colored part, I can't know the 3 color exactly, that's actually his right arm, 4 isn't it? And I'm referring to are the colored 5 figure in the frame that begins just above the 6 horizontal post and comes down to just below the 7 horizontal post, it that's his right arm, isn't 8 it? 9 A. There's also a tree there so I can't 10 tell whether that's part of the tree. 11 Q. Part of the tree? 12 A. That's a tree. 13 Q. There's something white in the tree 14 like a dove? 15 A. If you could point out to me exactly 16 what it is you're referring to. 17 Q. Yes. I'm referring to this right here. 18 MS. MORAN: You're putting your glasses up 19 there. Why don't you use a pointer. It's a 20 little unclear of exactly what you're pointing to. 21 BY MR. DiCIANNI: 22 Q. I don't have a pointer. I'll use my 23 pen. Right there. 24 Do you see where I'm pointing to?</p>

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<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. Why would you rule out that that's a 3 the reflection of a gun?</p> <p>4 A. I don't see the shape of a gun and I do 5 not see the skin of a hand of Mr. Howell in that 6 frame.</p> <p>7 Q. Well, you can't see his hand or skin in 8 any frames, right?</p> <p>9 A. Iwould have to go through them frame 10 by frame, but in this frame I do not see his arm 11 or his hand or a gun in that frame.</p> <p>12 Q. Okay. So let's talk about your opinion 13 that you could see the gun in Hill's hand and 14 you're only pointing that out because you think 15 that if you could see it in Hill's hand, we should 16 be able to see it in Howell's hand; is that 17 correct?</p> <p>18 A. There's an additional aspect to that.</p> <p>19 Q. What is that?</p> <p>20 A. Officer Hill testified that he did not 21 withdraw his firearm from his holster until he had 22 reached the driveway.</p> <p>23 My viewing of this video shows that he 24 withdraw his firearm as he rounded that corner and</p>	<p style="text-align: right;">Page 79</p> <p>1 hand, but also for another purpose?</p> <p>2 A. What page, please?</p> <p>3 Q. Page 11.</p> <p>4 A. With regards to the question, the 5 purpose is to point out what I see.</p> <p>6 Q. What you saw was something that was 7 inconsistent with what you thought his testimony 8 was when you point out where Hill has a gun in his 9 hand?</p> <p>10 A. It's not what I think was inconsistent. 11 It's what I know was inconsistent.</p> <p>12 Q. You deny that you're bringing these 13 things to light in your report merely to impeach 14 Officer Hill?</p> <p>15 A. Yes. I deny that.</p> <p>16 Q. You deny that. You deny that you have 17 any bias against Officer Hill?</p> <p>18 A. Absolutely deny that strongly.</p> <p>19 Q. You deny that you have any advocacy 20 here for the plaintiff?</p> <p>21 A. That's correct.</p> <p>22 Q. You say that this is a completely 23 independent, full and thorough forensic 24 evaluation?</p>
<p style="text-align: right;">Page 78</p> <p>1 went behind the tree.</p> <p>2 Q. Why is that important?</p> <p>3 A. Because his testimony was that he did 4 not withdraw his firearm until he had reached the 5 driveway.</p> <p>6 Q. So you're just wanting to point out 7 discrepancies in his testimony whether it's 8 relevant to an opinion or not? That's what you're 9 doing?</p> <p>10 A. There's other information in his 11 deposition and his statement in which he stated 12 that he did not point the gun at Mr. Howell until 13 he had reached the driveway, and from the video, I 14 see a different version of events.</p> <p>15 Q. That's really not relevant to any of 16 your opinions, though, is it?</p> <p>17 A. I'm looking at a shooting 18 reconstruction. At what point did a person have a 19 firearm in his hand whether it be Howell or 20 Officer Hill.</p> <p>21 Q. Okay. So you're wanting to point out 22 in Section 5 ii that you could see the gun in 23 Hill's hand is put there not only to support your 24 view that the video doesn't show a gun in Howell's</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes.</p> <p>2 Q. Let's show 240. You say that in your 3 report Page 11 you say that in frames 240, 252, 4 257, 264, 270 and 275 you can clearly see Officer 5 Hill's pistol, correct?</p> <p>6 A. Yes.</p> <p>7 Q. We know Officer Hill had a pistol in 8 his hand. There's no disputing that, correct?</p> <p>9 A. Well, I can see it, and that's what I 10 reported.</p> <p>11 Q. No, I know.</p> <p>12 So you're saying that independent of 13 our knowledge that he was holding a gun, you can 14 see a gun?</p> <p>15 A. Yes.</p> <p>16 Q. I'm going to ask you to show me in 240 17 where you see a gun. Do you want the pointer?</p> <p>18 Eventually we'll use the photographs for this.</p> <p>19 Let's start with you showing me exactly where you 20 see a gun in his hand.</p> <p>21 A. You see a black outline right here, 22 which can be enhanced in this software.</p> <p>23 Q. Did you enhance it?</p> <p>24 A. I did.</p>

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<p style="text-align: right;">Page 81</p> <p>1 Q. You did?</p> <p>2 A. Sure.</p> <p>3 Q. So you know how to enhance it right</p> <p>4 now?</p> <p>5 A. I could try.</p> <p>6 Q. Let's do it.</p> <p>7 A. What I'd like is to say is I don't know</p> <p>8 what the resolution is on this screen, but it's</p> <p>9 different than the monitor that I use on my</p> <p>10 computer so it's not going to be as clear. I</p> <p>11 think this is about as good as I'm going to get.</p> <p>12 Q. Well, that's better. Although maybe --</p> <p>13 it's sharper but a little blurrier.</p> <p>14 A. A little blurrier, but I can see and it</p> <p>15 kind of blends in with the line under the window,</p> <p>16 but there's a black object in his hand.</p> <p>17 Q. A black object in his hand? It extends</p> <p>18 from here to here?</p> <p>19 A. Well, again, the resolution on this is</p> <p>20 not what I see on my computer. I don't know what</p> <p>21 the resolution would be, but it's clear not as</p> <p>22 defined as my monitor.</p> <p>23 Q. So your monitor shows something</p> <p>24 different from what my monitor shows?</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. DiCIANNI: It's frame 240. We didn't</p> <p>2 number the pages, but they're in order.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Not from the photographs.</p> <p>5 BY MR. DiCIANNI:</p> <p>6 Q. You're saying the resolution on these</p> <p>7 is not good enough?</p> <p>8 A. Very poor.</p> <p>9 Q. But on yours you can enhance?</p> <p>10 A. Yes.</p> <p>11 Q. And if you were to print from your set</p> <p>12 that you have at your computer at home, would it</p> <p>13 be as clear as you're seeing on your monitor?</p> <p>14 A. No, it would not.</p> <p>15 Q. So the only place that we would be able</p> <p>16 to see what you see is if we all came to your home</p> <p>17 in Phoenix and looked at your monitor?</p> <p>18 A. Or a similar monitor, yes.</p> <p>19 Q. Okay. Well, what is that? What was</p> <p>20 the monitor that you used? It wasn't the computer</p> <p>21 you used; it's the monitor that made the</p> <p>22 difference?</p> <p>23 A. Well, combination of both, of course,</p> <p>24 and graphics, the graphics, of course.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. I think the resolution on my monitor is</p> <p>2 significantly greater quality.</p> <p>3 Q. Did you run off any photos from your</p> <p>4 monitor that would show us the better quality?</p> <p>5 A. I did not.</p> <p>6 Q. Do you have your monitor with you?</p> <p>7 A. I didn't use the PC that I have with</p> <p>8 me.</p> <p>9 Q. Let's go back to the way it was. This</p> <p>10 is sharper but it's blurrier so let's go back to</p> <p>11 the way it was.</p> <p>12 A. Uncheck the image adjust.</p> <p>13 Q. That's back to what it was?</p> <p>14 A. Right.</p> <p>15 MR. DiCIANNI: Let's mark this as Exhibit 2.</p> <p>16 (WHEREUPON, a certain document was</p> <p>17 marked Scott Deposition Exhibit</p> <p>18 No. 2 for identification, as of</p> <p>19 04/04/2017.)</p> <p>20 BY MR. DiCIANNI:</p> <p>21 Q. Let me ask you to turn to frame 240. I</p> <p>22 might know what you're going to say about this but</p> <p>23 can you see the gun in this photo?</p> <p>24 MR. ODIM: What page?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Tell us what it was.</p> <p>2 A. I have two monitors. Let's see. One</p> <p>3 is an LG monitor, 27-inch. I forget the model.</p> <p>4 The other one is a Samsung. Again, I don't know</p> <p>5 the model. It's a 28-inch.</p> <p>6 Q. So that doesn't help us too much.</p> <p>7 MR. DiCIANNI: I'm going to move that we</p> <p>8 adjourn this meeting to Phoenix, Arizona to your</p> <p>9 home.</p> <p>10 MR. ODIM: Of course at your expense.</p> <p>11 MR. DiCIANNI: I can't promise that.</p> <p>12 BY MR. DiCIANNI:</p> <p>13 Q. I assume that's something you wouldn't</p> <p>14 be able to show in a courtroom, then, right?</p> <p>15 A. I assume I would have to bring my</p> <p>16 computer and my monitor.</p> <p>17 Q. So if you were to bring your computer</p> <p>18 and your monitor to the courthouse and hook it up,</p> <p>19 it would show us a clear view of the gun in Hill's</p> <p>20 hand?</p> <p>21 A. I can't speak for what anybody else can</p> <p>22 see. I can speak to what I can see.</p> <p>23 Q. And you clearly see a gun in his</p> <p>24 hand?</p>

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<p style="text-align: right;">Page 85</p> <p>1 A. I clearly see a firearm, a black 2 firearm.</p> <p>3 Q. We know there's a gun in the hand. 4 There's no disputing that, but you can clearly see 5 a gun in the hand?</p> <p>6 A. Yes.</p> <p>7 Q. If I ask you in court to get up and 8 draw the outline of that gun on some exhibit 9 from your good monitor, you would be able to do 10 that?</p> <p>11 MR. ODIM: Objection. Now you're arguing 12 with him.</p> <p>13 MR. DiCIANNI: I'm not arguing.</p> <p>14 MR. ODIM: And badgering him. He's made it 15 clear in this room on your monitor enhancing your 16 image that the outline of the gun is present. 17 You're badgering him.</p> <p>18 BY MR. DiCIANNI:</p> <p>19 Q. No, I don't think I'm -- are you 20 feeling badgered? You're not feeling badgered, 21 are you?</p> <p>22 MR. ODIM: I think you should just move on. 23 BY THE WITNESS:</p> <p>24 A. I'm not going to get involved in</p>	<p style="text-align: right;">Page 87</p> <p>1 correct?</p> <p>2 A. Well, I'm saying that it's not how 3 he testified. It's how he demonstrated in 4 deposition Exhibit 21.</p> <p>5 Q. You would agree with me that a 6 demonstration by a witness on a witness stand is a 7 questionable piece of forensic evidence, correct?</p> <p>8 MR. ODIM: Objection. Foundation.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Iwould not agree with that.</p> <p>11 BY MR. DICIANNI:</p> <p>12 Q. You would not agree with that?</p> <p>13 A. No.</p> <p>14 Q. So you think that a person who 15 testifies about an event in a highly charged 16 conflicted possibly life-threatening situation 17 would be able to perfectly replicate on the 18 witness stand a position of a person by 19 demonstration?</p> <p>20 MR. ODIM: Again, objection. Foundation. 21 Multi-part question, and it's ambiguous.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I think if he couldn't he could say so 24 and say I can't do it.</p>
<p style="text-align: right;">Page 86</p> <p>1 attorneys's debates.</p> <p>2 BY MR. DiCIANNI:</p> <p>3 Q. You've testified a lot. You're 4 comfortable.</p> <p>5 You wouldn't let me badger you, would 6 you?</p> <p>7 A. I've been badgered.</p> <p>8 Q. It doesn't affect you, right?</p> <p>9 A. I answer the questions as best I 10 can.</p> <p>11 Q. I have a question. Are you feeling 12 badgered right now?</p> <p>13 A. No, not necessarily.</p> <p>14 Q. Thank you.</p> <p>15 So your next opinion now relates to the 16 gunshot wound entrance angles, correct?</p> <p>17 A. Item C, correct.</p> <p>18 Q. If I understand the opinion correctly, 19 you say that based on both Officer Hill's 20 testimony regarding the positioning of he and 21 Howell and the autopsy angles, the autopsy bullet 22 hole angle measurements, you disagree that Howell 23 was turned in the way that Officer Hill said he 24 was at the time that Officer Hill fired; is that</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. DiCIANNI:</p> <p>2 Q. Well, he could do his best and wouldn't 3 you expect him to do his best?</p> <p>4 A. I'm sorry?</p> <p>5 Q. Wouldn't you expect him as he's 6 testifying to do the best he can to replicate the 7 position that he's asked to replicate?</p> <p>8 MR. ODIM: Objection. Speculation. You're 9 asking this witness to put himself in the shoes of 10 someone else. He has no idea his thought process.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I'm looking at the demonstration that 13 he did, and that's what I'm using.</p> <p>14 BY MR. DiCIANNI:</p> <p>15 Q. Okay. And my question goes to the 16 validity of basing a forensic evaluation on that 17 type of testimony; you say that it's valid?</p> <p>18 A. That's the demonstration that he gave 19 under oath. That's the exhibit that I utilized.</p> <p>20 Q. So that's what you're refuting, what he 21 demonstrated at the deposition?</p> <p>22 MR. ODIM: Objection. That was not his 23 testimony.</p> <p>24 MR. DiCIANNI: I thought it was.</p>

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<p>1 BY THE WITNESS:</p> <p>2 A. I don't think I understand that 3 question.</p> <p>4 BY MR. DiCIANNI:</p> <p>5 Q. Let's back up. 6 Your opinion number C beginning on 7 Page 11 disputes the positions of Hill and Howell 8 based on Hill's testimony and based on autopsy 9 findings, correct?</p> <p>10 A. That's two of the factors, correct. 11 Q. And you're disputing that Howell was in 12 the position that Hill demonstrated at his 13 deposition when Hill shot?</p> <p>14 A. I lost you. 15 Q. Let me say it again. 16 You're disputing that Justus -- I'm 17 going to say Justus instead of Howell, okay. 18 You're disputing that Justus was in the 19 position that Hill described him in at the time 20 that Hill shot based on both Hill's testimony and 21 based on the autopsy findings, right? 22 A. And based upon the video. 23 Q. Well, right. And that's what you're 24 disputing, correct? You're disputing that Justus</p>	<p>Page 89</p> <p>1 Q. Yes, but we're talking about the angle 2 itself. Let's forget the clock for a minute. 3 The angle of 30 degrees to 60 degrees, 4 Hill is at the vertex, right?</p> <p>5 A. Now you're talking about an arc. 6 Q. No. I'm talking about an angle, not an 7 arc. 8 A. I think I've lost you on -- because I'm 9 going by the face of a clock. 10 Q. Okay. So Hill is in the middle where 11 the hands are attached to the clock? 12 A. Correct, yes. 13 Q. So that's the vertex of the angle, 14 right? 15 A. Okay, right. 16 Q. Okay. And the line segment, one line 17 segment is where Justus is standing, right? 18 A. Correct. 19 Q. And the other line segment would be at 20 12 o'clock? 21 A. Well, it's an approximation. 22 Q. I understand. But that's approximately 23 where the other line angle would go, to 24 12 o'clock?</p>
<p>1 was in the position that Hill demonstrated in the 2 video when Hill shot?</p> <p>3 A. Correct.</p> <p>4 Q. Thank you. And one of the bases for 5 that is the angle that Hill describes between the 6 two of them at the time at the time that he shot, 7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And that's the one o'clock/two o'clock 10 thing, right?</p> <p>11 A. Yes.</p> <p>12 Q. And the angle that you believe that 13 would demonstrate would be a 30 to 60-degree 14 angle, right?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. With 90-degree being at three o'clock?</p> <p>17 A. That's correct.</p> <p>18 Q. So that angle would have Hill at the 19 vertex?</p> <p>20 A. I'm sorry?</p> <p>21 Q. Hill would be at the vertex of the 22 angle?</p> <p>23 A. Approximately, between two and three -- 24 one to two o'clock I believe was the testimony.</p>	<p>Page 90</p> <p>1 A. One to two o'clock. 2 Q. That would be where Justus is? 3 A. Yes. 4 Q. That's one line segment? 5 A. Okay. 6 Q. Hill is at the vertex, right, the other 7 line segment would go up to the 12 o'clock? 8 A. 12 o'clock, correct. 9 Q. You're saying that these are an 10 approximations? 11 A. Approximations. 12 Q. If the angle description that Hill gave 13 is wrong, not one o'clock or two o'clock, let's 14 say it's two minutes after 12, and you credited 15 that testimony, your opinion would not be valid at 16 least based on the testimony? 17 A. That's the data that I have. 18 Q. I know. 19 A. That's the data that I have. 20 Q. Right. But testimony can be off, 21 correct? 22 A. I don't evaluate credibility. 23 Q. Exactly. Exactly. You look at 24 physical evidence.</p>

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1 A. Right.	1 A. Yes.
2 Q. Isn't that the danger in a forensic scientist using testimony or oral statements as forensic evidence, that you have to evaluate the credibility of it?	2 Q. And you measured that angle by what?
3 What line segments did you use and where was the vertex on establishing that angle?	3 What line segments did you use and where was the vertex on establishing that angle?
4 A. It's looking at the autopsy photographs. It's an estimation. There it wasn't enough data -- the photograph angles of the autopsy precluded me from doing another type of an angle where I use a protractor.	5 A. It's looking at the autopsy photographs. It's an estimation. There it wasn't enough data -- the photograph angles of the autopsy precluded me from doing another type of an angle where I use a protractor.
5 Q. You couldn't use a protractor?	6 Q. You couldn't use a protractor?
6 A. I couldn't use the protractor in this.	7 A. I couldn't use the protractor in this.
7 Q. Regarding the gunshot wound to the right side of Justus's back, you relied on a trajectory rod in the photograph?	8 Q. Regarding the gunshot wound to the right side of Justus's back, you relied on a trajectory rod in the photograph?
8 A. Yes.	9 A. Yes.
9 Q. And that would be Exhibit 21, correct, what was that from Thomas Rudd's deposition?	10 Q. And that would be Exhibit 21, correct, what was that from Thomas Rudd's deposition?
10 A. I don't know the exhibit -- it's an autopsy photograph.	11 A. I don't know the exhibit -- it's an autopsy photograph.
11 Q. Did you rely on any autopsy photographs other than what you referenced in your report?	12 Q. Did you rely on any autopsy photographs other than what you referenced in your report?
12 A. Yes.	13 A. Yes.
13 Q. You did, all right. I was afraid you were going to say that.	14 Q. You did, all right. I was afraid you were going to say that.
14 A. Let's mark this as Exhibit 3.	15 A. Let's mark this as Exhibit 3.
15 Q. (WHEREUPON, a certain document was marked Scott Deposition Exhibit No. 3 for identification, as of 04/04/2017.)	16 (WHEREUPON, a certain document was marked Scott Deposition Exhibit No. 3 for identification, as of 04/04/2017.)
16 BY MR. DiCIANNI:	17 BY MR. DiCIANNI:
17 Q. I'm going to ask you to look through the autopsy photos and ask you to point out which ones you relied upon, and I never will ask a witness to do something during a break because if you're working we're working, okay. So we're going to sit here while you do that, all right, and then we'll take a break.	18 Q. I'm going to ask you to look through the autopsy photos and ask you to point out which ones you relied upon, and I never will ask a witness to do something during a break because if you're working we're working, okay. So we're going to sit here while you do that, all right, and then we'll take a break.
18 A. How do you want me to point these out? Take them out? There's no numbers on them.	19 A. How do you want me to point these out? Take them out? There's no numbers on them.
19 Q. There are numbers on them but our paralegal has x-ray vision.	20 Q. There are numbers on them but our paralegal has x-ray vision.
20 A. Do you want me to take them out?	21 A. Do you want me to take them out?
21 Q. Yes. Why don't we have you take them out.	22 Q. Sure. Take your time.
22 A. Almost there.	23 A. Okay.
23 Q. So that's an alternative basis for that opinion?	24 MR. DiCIANNI: I'm going to suggest we take

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1 our break now and we'll organize these into
2 exhibits and then we'll come back. How long do
3 you want to take?
4 MS. MORAN: It's 12:15 now. We may just go
5 downstairs.
6 MR. DiCIANNI: 1:15.
7 MS. MORAN: Yes, no later than 1:15.
8 (WHEREUPON, a lunch recess was had
9 from 12:15 to 1:20 p.m.)
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1 also based on calculations you made based on these
2 autopsy photographs, correct?

3 A. Yes.
4 Q. I'm going to ask you to tell us before
5 we go to the photographs your methods for arriving
6 at this calculation.

7 A. Well, I looked at all the photographs
8 that have to do with the wound or what I feel is
9 something that could conceivably show some data or
10 scientific information that I would be interested
11 in. Then I narrowed that down to photographs that
12 are more related to the opinions that I would give
13 and the work that I'm doing. So I picked out all
14 these photographs. These are the ones that I
15 looked at the most, but there are certain
16 photographs that have more value than others.

17 Q. In Exhibit 4?

18 A. Yes.

19 Q. Well, then, just tell us first what it
20 was you did and I'll back up for a second.
21 Based on the autopsy findings, you
22 arrived at a conclusion, I believe, that the
23 orientation positioning between Officer Hill and
24 Justus was within that 30 degrees to 60 degrees

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1 A F T E R N O O N P R O C E E D I N G S
2 MR. DiCIANNI: Let's mark this Exhibit 4.
3 (WHEREUPON, a certain document
4 was marked Scott
5 Deposition Exhibit No. 4 for
6 identification, as of 04/04/2017.)
7 RONALD R. SCOTT,
8 called as a witness herein, having been previously
9 duly sworn and having testified, was examined and
10 testified further as follows:

11 EXAMINATION (Resumed)

12 BY MR. DiCIANNI:

13 Q. Mr. Scott, before we broke, you went
14 through all of the autopsy photographs which we
15 gave you which was the whole group of them and
16 then you picked out the ones that you used in your
17 opinions, correct?

18 A. Yes.

19 Q. And that's now what's been marked as
20 Exhibit No. 4, correct?

21 A. Yes.

22 Q. Your opinion regarding the positioning
23 of Justus and Officer Hill we've already talked
24 about it based on the testimony of Hill, but it's

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1 angle, correct?
2 A. Yes.
3 Q. Tell us how it is that you came to that
4 calculation based on these photographs before you
5 show us what's in the photographs. Just tell us.
6 A. I evaluated Officer Hill's statements
7 and his testimony and I evaluated the
8 demonstrative position that he demonstrated as to
9 how Mr. Howell had turned and then I look at the
10 gunshot wound evidence and I attempt to
11 synchronize the testimony to the trajectory rods
12 while looking at the video of course to see what
13 the posture of Mr. Howell is at various points in
14 the video and at points that would be consistent
15 with where the cartridge cases are found, and then
16 I keep narrowing it down testing that theory until
17 I can see those photographs that best support
18 Officer Hill's version of events or if they don't
19 support it, that as well. And that's what I did
20 in this case here.

21 I also looked at -- I did pick out some
22 photos in here that showed the bullets and one of
23 the issues with the bullets, I'm just looking at
24 the bullet for the purposes of seeing if there's

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<p style="text-align: right;">Page 101</p> <p>1 anything in there that would indicate a gunshot 2 had struck the tree or there had been a deflection. 3 So I'm looking at the shape and size of the bullet 4 to see did the bullet expand as it's designed to 5 do in soft tissue.</p> <p>6 Q. Or whether it's pristine?</p> <p>7 A. Or whether it's pristine or whether it 8 has damage.</p> <p>9 Q. So am I understanding that just based 10 on the gunshot wound angles, which to the extent 11 they can be determined from the autopsy findings, 12 you are not able to come to a conclusion regarding 13 the positioning of the two people?</p> <p>14 A. I can come to a position of the two 15 people, certain parts of it.</p> <p>16 Q. When I asked you about the methodology, 17 you mentioned the angles the autopsy findings 18 showed. You also mentioned the positioning of the 19 casings. You also mentioned various data you got 20 from the video.</p> <p>21 My question is if you were excluding 22 the casings and the video, does the gunshot wound 23 angles from the autopsy themselves provide you 24 with the data you need to render an opinion that</p>	<p style="text-align: right;">Page 103</p> <p>1 trajectory rod and we back -- reverse engineer it, 2 the trajectory rod if we followed the imaginary 3 line on that trajectory rod out to the point where 4 the shooter should be, that gives us the bullet 5 path prior to it striking the body.</p> <p>6 Q. So the medical examiner's report only 7 concluded that the shots were left to right and 8 upward, correct?</p> <p>9 A. And front to back.</p> <p>10 Q. And front to back, correct?</p> <p>11 A. Correct.</p> <p>12 Q. It didn't put angles -- it didn't come 13 to any conclusions regarding angles?</p> <p>14 A. I don't recall reading angles in his 15 report.</p> <p>16 Q. So you concluded regarding the 30 to 17 60-degree angle based on using the trajectory rods 18 as one of the line segments in the angle, correct?</p> <p>19 A. Yes.</p> <p>20 Q. With Officer Hill at the vertex?</p> <p>21 A. Yes.</p> <p>22 Q. And where would the other line segment 23 be, straight south from Officer Hill?</p> <p>24 A. Straight south, yes.</p>
<p style="text-align: right;">Page 102</p> <p>1 there was a 30 to 60-degree orientation between 2 Justus and Hill?</p> <p>3 A. Yes, partially, partially.</p> <p>4 Q. What's partial about it? What part?</p> <p>5 A. The trajectory rods do show a left to 6 right. Of course, I'm using it in conjunction 7 with the actual autopsy report and the medical 8 examiner's description of the pathway of the 9 wound.</p> <p>10 Q. Okay.</p> <p>11 A. So I'm looking at that and looking at 12 and then I'm looking at the trajectory rods to see 13 what he's describing in his report to see the 14 photographic evidence of exactly what he's talking 15 about because sometimes they talk upward and left 16 right, but trajectory rod is actually going to 17 show you a much better definition of what he's 18 saying in his typewritten report.</p> <p>19 So I'm looking at that and when I see 20 the trajectory rods, I can see that the gunshot is 21 barely coming from the left of Mr. Howell. It's 22 going upward. Both of them are going upward, one 23 more than the other, and they're going back to 24 front. So that helps place -- if we take the</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. So show me where -- let's talk about 2 the one on the right side. There's two gunshot 3 wounds, right?</p> <p>4 A. Yes.</p> <p>5 Q. One is on the right side and one is on 6 the left side?</p> <p>7 A. Yes.</p> <p>8 Q. Show me the photographs that you relied 9 on to arrive at these angles regarding the 10 right-sided gunshot wound.</p> <p>11 A. I have autopsy 011, autopsy 012, 013, 12 021 and 022 I've looked at. They don't have 13 trajectory rods, but it does show evidence of an 14 angle, 02 -- strike that. 029, 030, 031, and I 15 believe that's it for the upper right back.</p> <p>16 Q. So from the bullet holes themselves 17 without the trajectory rods, are you able to come 18 to a measurement of an angle?</p> <p>19 A. A general angle.</p> <p>20 Q. How do you do that?</p> <p>21 A. You look at the abrasion ring, you look 22 at what is called the lead-in, the lead-in 23 abrasion ring which in this case is inferior on 24 the wound or it's at the lower part of the wound.</p>

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<p style="text-align: right;">Page 105</p> <p>1 It's like if you had a tub of butter, margarine, 2 and you took your finger and you pushed it in at 3 an angle, you'd see that the lower portion has a 4 lead-in where your finger first touches it and 5 then it goes into the margarine.</p> <p>6 When a bullet is striking a person or 7 any object at an angle, it will strike as opposed 8 to a 90-degree angle, say it strikes at a 9 45-degree angle, what happens is the side of the 10 bullet that first strikes the object or the skin 11 is going to create a lead-in abrasion until the 12 rest of the bullet goes in.</p> <p>13 When I see the wounds without the 14 trajectory rod, for example, on if we look at 031 15 and we see the trajectory rod, and then we look at 16 a photograph of that same gunshot wound which I 17 believe is 024 and 023, yes, 022, if you look at 18 how the trajectory rod is positioned in 031, 19 you'll see that he's got the rod going across the 20 lead in or this small defect, I'll point it out if 21 I can, it's this area here as you're looking at it 22 on this photo it looks like it's about 10:00.</p> <p>23 Q. 023?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 the direction left to right.</p> <p>2 Q. So the bullet hole itself absent the 3 trajectory rod will tell you the point of entry 4 based on the 10:00 nub that we talked about but no 5 more about the measurement of the angle, is that 6 fair to say?</p> <p>7 MR. ODIM: Objection. That was not his 8 testimony.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Well, the trajectory rod enhances it. 11 I would have to know the position of the gun, but 12 I could put them both together and come up with a 13 general -- it would be less specific than it is 14 when the trajectory rod is available.</p> <p>15 BY MR. DiCIANNI:</p> <p>16 Q. Well, that's my point. 17 The bullet hole itself doesn't give you 18 the measurement of the angle?</p> <p>19 A. It gives you a general direction, 20 right.</p> <p>21 Q. Yes. Okay. You need the trajectory 22 rod to give you the measurement of the angle, 23 right?</p> <p>24 A. That gives it a more accurate data to</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. There's like a little nub of some type?</p> <p>2 A. Right. That's where the bullet would 3 first strike the skin because it's striking it at 4 an angle.</p> <p>5 So when I'm looking at this, I'm 6 looking at it to see has the medical examiner 7 placed the trajectory rod across the lead-in; in 8 other words, I'm not trying to evaluate his 9 medical expertise, I'm looking at it from a 10 firearms perspective to see has he placed that 11 trajectory rod accurately so that the trajectory 12 rod is accurately reflecting the point at which 13 the bullet first struck the body. So that would 14 be the first thing I'm looking for.</p> <p>15 Then through some of the other 16 photographs of the upper right gunshot, I'm taking 17 into account the testimony of Officer Hill and I'm 18 testing and I'm evaluating the testimony that 19 Mr. Howell is at one to two o'clock while he's in 20 the center of the clock and does that trajectory 21 rod -- is that consistent with the testimony of 22 Officer Hill, and from what I can see, it appears 23 to be consistent at least as far as the angle, not 24 the upwards angle, at least as far as the angle,</p>	<p style="text-align: right;">Page 108</p> <p>1 work with.</p> <p>2 Q. And how do you -- the trajectory rod is 3 put into the bullet hole in a way that it could 4 deviate from the path, the actual path of the 5 bullet, correct?</p> <p>6 MR. ODIM: Objection, foundation.</p> <p>7 BY MR. DiCIANNI:</p> <p>8 Q. From your experience.</p> <p>9 A. Well, I think that falls into the 10 medical examiner's prerogative.</p> <p>11 Q. So you would defer to the medical 12 examiner regarding the reliability of the 13 trajectory rod as an indication of the angle of 14 entry?</p> <p>15 A. Well, the pathway of the bullet in the 16 body, that would be the area for the medical 17 examiner to determine.</p> <p>18 Q. Right. We understand that, but my 19 question is to the extent that the trajectory rods 20 are an accurate reflection of the angle of entry, 21 you would defer to the medical examiner's 22 opinion or judgment regarding how accurate that 23 would be?</p> <p>24 A. That's correct.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. So which of the photographs that you've 2 identified regarding the right-side bullet wound 3 would be the one that was most probative or most 4 revealing to you regarding the angle?</p> <p>5 A. 031, 030, 029.</p> <p>6 Q. I'm sorry, you said 031. What else?</p> <p>7 A. 029 and 013, 012, 011. I think that's 8 it.</p> <p>9 Q. Let's just use 029. Obviously there's 10 an angle formed by the ruler or yardstick and the 11 trajectory rod, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And is that the angle you would have 14 relied on or determined was an accurate depiction 15 of the positioning between the two people?</p> <p>16 A. I looked at them all. I looked at them 17 in the aggregate. I don't think anyone gives you 18 a single ability to come up with that angle. If 19 you look at them in the totality, which is what I 20 did, evaluated them in total.</p> <p>21 Q. That's what I want to understand. I 22 want to understand how these different photographs 23 with the measurements, with the trajectory rod led 24 you to the 30 to 60 percent angle, I'm sorry, 30</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Directly overhead?</p> <p>2 A. Directly overhead and even from the 3 feet up would have been more accurate. These give 4 us a general estimation, but they are aren't as 5 accurate as I would like to see them.</p> <p>6 Q. From this you conclude or at least it 7 supports your opinion that there was a 30 to 8 60-degree angle created by the positions of Hill 9 and Justus?</p> <p>10 A. It's consistent with what Officer Hill 11 testified that the position was of Mr. Howell in 12 relation to him as they moved south.</p> <p>13 Q. What does the -- did you measure if any 14 angles or were you able to determine any angles of 15 upward trajectory?</p> <p>16 A. There was insufficient data in the 17 photographs for me to do that.</p> <p>18 Q. Regarding the wound on the left side, 19 tell me which photographs gave you the information 20 you needed to draw conclusions about that.</p> <p>21 A. 008, 009, 010, 027, 028. That's it.</p> <p>22 Q. Did the angle measurement you came to 23 regarding the right sided bullet wound tell you 24 the positioning between the two, did it tell you</p>
<p style="text-align: right;">Page 110</p> <p>1 to 60-degree angle that you concluded. 2 So 029 was one of them, right?</p> <p>3 A. 029 was one.</p> <p>4 Q. Did you put a protractor on here to 5 measure that angle?</p> <p>6 A. No, I did not.</p> <p>7 Q. What were some of the other ones? Let 8 me back up.</p> <p>9 Did you use a protractor regarding any 10 of them, any of the angles?</p> <p>11 A. I did not.</p> <p>12 Q. How did 029 tell you that this was 13 between 30 and 60 degrees, that's just an eyeball 14 estimate?</p> <p>15 A. It's an estimate, but you've got to 16 look at it in conjunction with the other 17 photographs.</p> <p>18 Q. Tell me about the other ones.</p> <p>19 A. For example, 031 I think is a better 20 photograph.</p> <p>21 Q. Did you measure that?</p> <p>22 A. I did not. Preferably we would have 23 liked to have seen an overhead photograph going 24 down which was not taken.</p>	<p style="text-align: right;">Page 112</p> <p>1 anything about what frame the shot would have 2 occurred in on the video?</p> <p>3 A. The right side.</p> <p>4 Q. The right side?</p> <p>5 A. No. I was unable to determine 6 sequence.</p> <p>7 Q. On the left side you were unable to 8 determine the angle so it didn't tell you anything 9 about orientation between the two from a 10 north-south -- I'm sorry, let me rephrase that. 11 From the left side bullet wound, you 12 couldn't determine the angle so it didn't tell you 13 anything about their positioning based on a 14 north-south orientation, correct?</p> <p>15 A. It appears to be consistent with the 16 right side.</p> <p>17 Q. In what way?</p> <p>18 A. In the left to right -- general left to 19 right.</p> <p>20 Q. Generally left to right?</p> <p>21 A. Right, but only on the left to right 22 limitation, not the front to back or upward.</p> <p>23 Q. Okay. You couldn't say it was 30 to 24 60 degrees, only that it was left to right?</p>

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<p style="text-align: right;">Page 113</p> <p>1 A. It was roughly generally the same as 2 the upper right. 3 Q. How did you determine that? 4 A. By looking at two photographs. 5 Q. Which ones? 6 A. I'm going to take photograph 008 to 7 start and then I'm going to take photograph 011. 8 Q. 011 and 008.</p> <p>9 A. Right.</p> <p>10 Q. Okay. So tell me what the comparison 11 of those two photographs tells you about the angle 12 of entry.</p> <p>13 A. Similar, in other words, differences 14 in -- differences in the positioning of the rods 15 would be accountable to either movement of the 16 shooter, movement of the victim or a combination 17 of both.</p> <p>18 Q. The comparison of these two photographs 19 doesn't tell you that the bullet entry on the 20 right side -- I'm sorry, on the left side 21 indicates a 30 to 60-degree orientation between 22 the two, correct?</p> <p>23 A. Just generally consistent with each 24 other, not exact, not exact.</p>	<p style="text-align: right;">Page 115</p> <p>1 only way those gunshots can occur is if we follow 2 that trajectory rod and then follow an imaginary 3 line down and the gun would have to have been on 4 the ground facing upward.</p> <p>5 So when I look at that in the video, I 6 can see Officer Hill clearly has his pistol over 7 from his shoulder, generally I call it horizontal 8 so, in other words, the arm is generally 9 horizontal, and the gun is vertical, in other 10 words, it's not canted to the left or right or 11 downward.</p> <p>12 When I look at that and then I look at 13 the gunshot trajectory rods placed by medical 14 examiner, that tells me that these gunshot wounds 15 have been caused by the orientation of 16 Mr. Howell's body to the gun and not gun being 17 down on the ground shooting upwards.</p> <p>18 Q. So what are you saying?</p> <p>19 A. I'm saying that Mr. Howell in both of 20 these instances had his back to the gun, at least 21 the left side of his back to the gun and he was 22 bent over to some degree. In the process of 23 bending over, in the process of falling or having 24 fallen to the ground.</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Consistent to the extent that they were 2 both left to right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, you were unable to make a 5 determination based on the angles regarding the 6 right side wound as to the frame in the video in 7 which that shot would have taken place, but it 8 seems like you are making a determination 9 regarding the left side injury regarding what that 10 indicates in regards to the frame in which it was 11 shot, am I understanding that correctly?</p> <p>12 MR. ODIM: Objection. Foundation and it 13 misstates his testimony and his opinions and 14 observations as expressed in the report.</p> <p>15 BY MR. DiCIANNI:</p> <p>16 Q. You can answer.</p> <p>17 A. I think you're misunderstanding. I'm 18 talking at this point only of the left-to-right 19 angle. The upward angle is a completely different 20 category.</p> <p>21 Q. What do you mean?</p> <p>22 A. Okay. If we take -- if we were to take 23 Mr. Howell in the anatomical position that he's in 24 now and stand him erect, stand up straight up, the</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Are you saying Hill shot him after he 2 fell to the ground?</p> <p>3 A. It's possible. Yes, I am.</p> <p>4 Q. What do you mean it's possible?</p> <p>5 A. That the trajectory rod would line up 6 because of its acute upward -- he would either 7 have to be -- his upper body would have to be 8 parallel to the ground bent over at the waist or 9 falling or he could have been on the ground when 10 he was shot.</p> <p>11 Q. But you can't say that to a reasonable 12 degree of scientific certainty that he shot him 13 when he was on the ground?</p> <p>14 A. I could say that it's a possibility.</p> <p>15 Q. Can you say which frame or which range 16 of frames the second shot occurred in based on 17 your measurements?</p> <p>18 A. I'm not giving a sequence of shots 19 as to which one of these shots were first to 20 second.</p> <p>21 Q. I'm not asking you. Okay. Good point.</p> <p>22 You are not rendering any opinions 23 about the sequence of the shots?</p> <p>24 A. Correct.</p>

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<p style="text-align: right;">Page 117</p> <p>1 Q. You're unable to say which frame the 2 right side wound shot occurred? We've already 3 been through that.</p> <p>4 A. I can include the frames that are 5 possibilities, and I can exclude the frames that 6 would not have produced it.</p> <p>7 Q. For the right side?</p> <p>8 A. To the right side, correct.</p> <p>9 Q. Tell me what those frames would 10 be.</p> <p>11 A. I have to just look at those still 12 photos again.</p> <p>13 Q. Okay.</p> <p>14 A. I'm talking about the video frames.</p> <p>15 Q. We could do it either on the hard 16 copies or on the video itself.</p> <p>17 A. Exhibit 2.</p> <p>18 Q. Exhibit 2, yes, that's the series of 19 frames.</p> <p>20 A. The gunshot which could be excluded 21 would be from 259 backwards going back to 231.</p> <p>22 Q. So are you only talking about the right 23 side or either side?</p> <p>24 A. At this point I'm only talking about</p>	<p style="text-align: right;">Page 119</p> <p>1 so it is in disagreement.</p> <p>2 Q. We'll deal with that as, well, but 3 okay.</p> <p>4 Just the angles now, what is the 5 angles -- what does the angle tell you about when 6 these the left-sided shot could have occurred?</p> <p>7 A. Well, it shows Justus Howell went over 8 at the waist. It shows Officer Hill with his 9 firearm and arms extended horizontally and the gun 10 vertical, in the vertical plane, and when I look 11 at Justus Howell in this position, a gunshot that 12 struck him on the left side could produce the 13 upward angle into his body because he's bent over 14 at the waist and that would extrapolate back to 15 the muzzle of the gun.</p> <p>16 Q. The way in which he's pointing the gun 17 in all of the frames would rule out that he shot 18 Justus while he was on the ground; isn't that 19 correct?</p> <p>20 A. That's not correct.</p> <p>21 Q. Show me a frame in which you think it 22 would be possible that he shot him while he was on 23 the ground?</p> <p>24 A. We would have to move up to where</p>
<p style="text-align: right;">Page 118</p> <p>1 the right side.</p> <p>2 Q. In your opinion, the right side could 3 not have occurred from 231 to 259?</p> <p>4 MR. ODIM: Ron, would this be clearer on the 5 screen?</p> <p>6 MR. DiCIANNI: We could do it that way if you 7 want.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Move up to 257 or you could move up to 10 259. Now, at 258 it's possible for the gunshot in 11 the right shoulder to have occurred. The problem 12 is there's a discharged cartridge case that is 13 some 12 feet forward of the gun so that's 14 inconsistent of it happening at this point.</p> <p>15 BY MR. DiCIANNI:</p> <p>16 Q. Let's just focus, though, on what the 17 angles tell us, okay.</p> <p>18 The right side bullet wound could have 19 occurred at 258 based on the angles?</p> <p>20 A. Yes.</p> <p>21 Q. What about the left side?</p> <p>22 A. The left side you would have to move up 23 to -- beginning at 275, only the angle, but this 24 is not consistent with the cartridge case location</p>	<p style="text-align: right;">Page 120</p> <p>1 Mr. Howell was on the ground, however, we cannot 2 see Officer Hill behind the tree.</p> <p>3 Q. I see. So what frame are you referring 4 to? You've got the book in front of you.</p> <p>5 A. At 282, from 282 if we move up to -- 6 this only goes up to 285, but if we move up to 7 the 287 area and now we see Officer Hill 8 beginning to move towards the tree and 9 unfortunately at this point here you'll become 10 obstructed, but at that point you can still see 11 him now he's obstructed.</p> <p>12 Q. At 292 he's obstructed?</p> <p>13 A. He's obstructed and Howell was on the 14 ground.</p> <p>15 Q. Keep going. Let's keep going.</p> <p>16 He comes out from behind the tree -- 17 well, it was before what we're looking at now.</p> <p>18 What's the first frame where he comes 19 out from behind the tree? Is it 309?</p> <p>20 A. I think it's about 304.</p> <p>21 Q. In each of the frames before he goes 22 behind the tree and each of the frames after he 23 comes out from behind the tree, his gun is pointed 24 in a direction which would be inconsistent with</p>

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<p>1 Justus being shot on the ground, correct?</p> <p>2 A. I don't know what effect the recoil has</p> <p>3 on Officer Hill at that point.</p> <p>4 Q. What do you mean?</p> <p>5 A. When you shoot a gun, there is recoil,</p> <p>6 both linear recoil and vertical recoil.</p> <p>7 Q. What are you suggesting here?</p> <p>8 A. I can't tell if Officer Hill has fired</p> <p>9 from behind the tree. What I'm saying is looking</p> <p>10 only at Mr. Howell, if he was on the ground that</p> <p>11 could produce that upward angle. If Officer</p> <p>12 Howell (sic) has fired from behind the tree and</p> <p>13 the cartridge case indicates that he did fire from</p> <p>14 behind the tree.</p> <p>15 Q. The firing from behind the -- well, the</p> <p>16 direction that we can see the gun pointed in in</p> <p>17 every instance is inconsistent with Justus being</p> <p>18 shot while he was on the ground unless there was a</p> <p>19 recoil that would have redirected the direction of</p> <p>20 the gun, correct?</p> <p>21 A. Except from when he was behind the</p> <p>22 tree, correct.</p> <p>23 Q. We can't see what happens behind the</p> <p>24 tree?</p>	<p>1 did the autopsy?</p> <p>2 A. I don't have a good recollection of</p> <p>3 what doctor did the autopsy.</p> <p>4 Q. So you only read Dr. Rudd's deposition</p> <p>5 for purposes of seeing if he had some observation</p> <p>6 from the autopsy that would have been inconsistent</p> <p>7 with your opinions; is that fair to say?</p> <p>8 A. Well, inconsistent with the photographs</p> <p>9 of the autopsy, with the trajectory rods and the</p> <p>10 autopsy report itself.</p> <p>11 Q. Did you find anything in his deposition</p> <p>12 that was inconsistent with any of those sources?</p> <p>13 A. Nothing significant that would affect</p> <p>14 my opinions.</p> <p>15 Q. Is it appropriate it from a forensic</p> <p>16 perspective to rely on the deposition testimony of</p> <p>17 Dr. Rudd?</p> <p>18 A. Yes.</p> <p>19 Q. Would it affect your opinion if</p> <p>20 you understood that he was not a medical</p> <p>21 examiner?</p> <p>22 A. I would certainly want to reconcile if</p> <p>23 any significant conflicts and obviously have to</p> <p>24 refer that to counsel to look at from a different</p>
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<p>1 A. Correct.</p> <p>2 Q. Did you look at the computer animation</p> <p>3 I'll call it that was put together by the expert</p> <p>4 that the Task Force retained to do that?</p> <p>5 A. I don't recall seeing anything in that</p> <p>6 line, no.</p> <p>7 Q. Obviously you have no opinion on that</p> <p>8 opinion?</p> <p>9 A. I don't even know what you're talking</p> <p>10 about.</p> <p>11 Q. That's a good way to cut off an entire</p> <p>12 line of questioning.</p> <p>13 It looks like you read Thomas Rudd's</p> <p>14 deposition and relied on it for at least</p> <p>15 something.</p> <p>16 What did you rely on Rudd's deposition</p> <p>17 for?</p> <p>18 A. I wanted to see if there was any</p> <p>19 changes in his testimony. I believe it that's</p> <p>20 Dr. Rudd.</p> <p>21 Q. Dr. Rudd.</p> <p>22 A. I wanted to see if there was anything</p> <p>23 in there that conflicted with his autopsy report.</p> <p>24 Q. Was it your understanding that Dr. Rudd</p>	<p>1 perspective.</p> <p>2 Q. Would it affect your opinion at all if</p> <p>3 you knew that he was under indictment for perjury?</p> <p>4 MR. ODIM: Objection. Irrelevant.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I can only take the information that I</p> <p>7 have. That's what I had at the time I was doing</p> <p>8 my evaluation.</p> <p>9 BY MR. DiCIANNI:</p> <p>10 Q. Would it affect your opinion if you</p> <p>11 knew he didn't do the autopsy?</p> <p>12 A. That's an issue of credibility.</p> <p>13 Q. The location of the casings seems to be</p> <p>14 crucial to your opinions; is that fair to say?</p> <p>15 A. It's an important factor, yes.</p> <p>16 Q. You conclude from the location of the</p> <p>17 casings that Officer Hill shot at a later point</p> <p>18 than when he says he does on or around 257 as you</p> <p>19 read it?</p> <p>20 A. That's correct.</p> <p>21 Q. And it's your opinion that Officer Hill</p> <p>22 would have completed both shots in a quarter of a</p> <p>23 second from 257 based on his testimony; is that</p> <p>24 what you're concluding?</p>

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<p style="text-align: right;">Page 125</p> <p>1 A. At or about 257.</p> <p>2 Q. You disagree based on the ejection</p> <p>3 patterns that you would expect from that gun to</p> <p>4 the right and to the rear, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Are you aware of any cautions in the</p> <p>7 forensic world about putting too much reliance on</p> <p>8 the location of shell casings?</p> <p>9 A. Yes, I am.</p> <p>10 Q. What are those based on?</p> <p>11 A. Grip, orientation of the pistol.</p> <p>12 That's why I always spoke for both horizontal and</p> <p>13 vertical orientation that I see the officer in</p> <p>14 with his pistol, height of the pistol above the</p> <p>15 ground, the canting upward or downward, the</p> <p>16 direction of the pistol when shooting, tightness</p> <p>17 of the grip to a novice as opposed to an</p> <p>18 experienced person, and then there's the issue of</p> <p>19 the ground surface and there's two aspects to</p> <p>20 that. There's the point of impact and then</p> <p>21 there's the final resting location.</p> <p>22 The additional aspect that has to come</p> <p>23 into play is the possibility of dislocation</p> <p>24 through the arrival of medical personnel or people</p>	<p style="text-align: right;">Page 127</p> <p>1 20 months later after the pistol has been</p> <p>2 returned to him, that would not be the ideal</p> <p>3 situation. The next best alternative is to use</p> <p>4 the studies and treatises available for that</p> <p>5 design of gun.</p> <p>6 Q. So did you refer to some studies and</p> <p>7 treatises available for that type of gun?</p> <p>8 A. Yes, I did.</p> <p>9 Q. For that particular make and model?</p> <p>10 A. Yes.</p> <p>11 Q. Tell me what those studies were.</p> <p>12 A. I believe I provided them to</p> <p>13 Mr. Rubinstein. They should have been disclosed.</p> <p>14 Q. You did?</p> <p>15 A. Yes.</p> <p>16 Q. Are they in your report, then?</p> <p>17 A. They're not in the report.</p> <p>18 Q. Why are they not in the report?</p> <p>19 A. They're supporting materials.</p> <p>20 Q. Doesn't Rule 26 require you to disclose</p> <p>21 what you based your opinion on?</p> <p>22 A. They should have been disclosed.</p> <p>23 Q. Would you agree your report is</p> <p>24 defective based on it not containing a very</p>
<p style="text-align: right;">Page 126</p> <p>1 that should not be in the crime scene area. That</p> <p>2 has to be taken into account.</p> <p>3 Q. All those factors have to be taken into</p> <p>4 consideration if you're going to rely on the</p> <p>5 casings?</p> <p>6 A. Correct.</p> <p>7 Q. Even though they're designed to go</p> <p>8 right and rear, they don't always go right and</p> <p>9 rear, correct?</p> <p>10 A. Generally they do.</p> <p>11 Q. Are you familiar with studies about</p> <p>12 casing ejection and the rate at which they go</p> <p>13 right and rear when they're designed to go right</p> <p>14 and rear?</p> <p>15 A. It depends upon the pistol model and</p> <p>16 the physical design.</p> <p>17 Q. Did you do any studies regarding</p> <p>18 Officer Hill's -- well, did you review any</p> <p>19 ejection studies regarding the rates and ejection</p> <p>20 pattern regarding Officer Hill's weapon?</p> <p>21 A. Unfortunately the Lake County task</p> <p>22 force once again failed to do a basic forensic</p> <p>23 test contiguous with this shooting incident.</p> <p>24 Ideally they should have done it -- for me</p>	<p style="text-align: right;">Page 128</p> <p>1 important fact or a very important source</p> <p>2 regarding your opinion?</p> <p>3 A. No. I believe this --</p> <p>4 MR. ODIM: Objection. This is the</p> <p>5 attorney -- an attorney's issue. He's not an</p> <p>6 expert on the court rules, and if we do have</p> <p>7 those, then we will certainly tender them as soon</p> <p>8 as --</p> <p>9 BY MR. DiCIANNI:</p> <p>10 Q. You didn't sign your report?</p> <p>11 A. I did.</p> <p>12 Q. I don't see a signature on it.</p> <p>13 A. I did sign it.</p> <p>14 Q. Take a look at Exhibit 1 and show me</p> <p>15 where your signature should be found. Maybe I</p> <p>16 missed it somehow.</p> <p>17 A. There is no signature on Exhibit 1.</p> <p>18 Q. You've been an expert witness for a</p> <p>19 long time.</p> <p>20 You've familiar with Rule 26?</p> <p>21 A. Yes.</p> <p>22 Q. You know that it's required to be</p> <p>23 signed by the expert?</p> <p>24 A. I signed my report and forwarded it to</p>

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<p style="text-align: right;">Page 129</p> <p>1 Mr. Rubenstein. 2 MR. ODIM: And we will get you that version. 3 BY MR. DiCIANNI: 4 Q. Do you know if that version is any 5 different from the version that's been presented 6 to us unsigned? 7 A. It better not be. It certainly 8 shouldn't. 9 Q. You put the report -- you put these 10 studies in the report you completed? 11 A. Well, I made reference to the studies 12 in my report and then I submitted the studies as 13 supporting materials. I'll see if I can find that 14 for you. Page 12, Section D and it's the 15 paragraph under the two smaller paragraphs 16 beginning with: "This pistol was not tested..." 17 Q. You talk about treatise sources had no 18 mechanical design of the weapon. 19 You don't identify the actual treatise 20 sources or known -- or define information, 21 correct? 22 A. Correct, although I did mention that in 23 my qualification section with regards to the SIG 24 Sauer pistols.</p>	<p style="text-align: right;">Page 131</p> <p>1 Your opinion assumes that the grip 2 utilized in this case did not affect the location 3 of the casings, correct? 4 A. I'm looking at Mr. Hill's training 5 record. It indicated he would be a highly 6 qualified marksman and well above average 7 police-trained shooter. 8 Q. That tells you that his grip would be 9 conventional? 10 A. It would be conventional and he would 11 be better trained than the average trained police 12 officer which most of the studies are based on? 13 Q. That would suggest to you that his grip 14 would not have altered the right rear pattern, 15 ejection pattern? 16 A. That's a fair statement. 17 Q. That was your conclusion? 18 A. Yes. 19 Q. It's an assumption based on your 20 knowledge of Officer Hill's qualifications? 21 A. Correct. 22 Q. It could also have been affected by the 23 wind? 24 A. The wind?</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. Tell me these studies that you relied 2 on regarding this particular pistol. 3 A. There were two videos which I provided 4 and then there were a number of articles from I 5 believe it might have been Mr. Haag's book or 6 Mr. Hueske's or both. There was an article that 7 I provided from the Indiana Engineering Journal by 8 a gentleman by the name of John Nixon. There may 9 have been another study. I just don't recall what 10 it is right now. 11 Q. What do these studies say about the 12 I'll call it the error rate regarding the ejection 13 of casings from this type of a pistol to the right 14 to the rear? What do they say about that? 15 A. I don't recall the error rates. 16 Q. We talked about the different factors 17 that can affect where casings end up, correct? 18 A. Yes. 19 Q. We talked about the way the officer is 20 holding the gun, what did you call that? 21 A. Grip. 22 Q. Grip. How did you determine that the 23 grip couldn't have affected where the -- strike 24 that.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Yes. 2 A. Insignificant. 3 Q. Why do you say that? 4 A. Cartridge case is not going to be 5 affected by the wind unless it is after the point 6 of impact. 7 Q. Why would that matter? 8 A. Because the cartridge case is not going 9 to be involved -- is not going to have a 10 significant -- it's going to be ejected through 11 momentum of the mechanical action of the gun and 12 it's going to fall to its point of impact through 13 gravity. Wind is not going to have a significant 14 effect on a cartridge case in such a short 15 distance. 16 Q. Well, are there studies that you base 17 that opinion on, that winds will not have an 18 effect? 19 A. I'm not aware of any studies. 20 Q. So where do you derive that opinion 21 that the wind can't affect location? 22 A. Experience and training with the SIG 23 Sauer line of pistols. 24 Q. You fired SIG Sauer pistols outdoors in</p>

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1 the wind?	1 A. Well, I made the decision not to
2 A. Yes.	2 shoot.
3 Q. When?	3 Q. Are you familiar with any studies that
4 A. Carried SIG Sauer pistols as a police	4 have -- well, did you take into consideration any
5 officer and this is in my report, in 1987 and 1988	5 effect that Officer Hill's movement might have on
6 I was involved in the State Police evaluation of	6 the location of the casings?
7 transitioning from revolvers to semiautomatic	7 A. Yes.
8 pistols. SIG Sauer was one of the pistols we	8 Q. What did you do to take that into
9 evaluated.	9 consideration?
10 After the SIG Sauer was chosen for the	10 A. Movement would have a slight impact on
11 department firearm, I carried that for	11 its point of impact. What it would not have is
12 approximately at least ten years, fired it every	12 any variation in its forward movement to the
13 year, yearly qualification, and just by virtue of	13 extent I see in this particular shooting.
14 my work in the forensic laboratory, I've had	14 Q. Define for me point of impact.
15 literally hundreds of occasions to fire the SIG	15 A. Point of impact is where the cartridge
16 Sauer pistol. I own a SIG Sauer pistol. I	16 case has been ejected, the first time it strikes
17 actually purchased the one that I carried when I	17 the ground.
18 was with the police and I still own it today and	18 Q. Strikes anything?
19 I'm very familiar with them, been involved in	19 A. Strikes anything.
20 competitions with them.	20 Q. You're saying that that would
21 Q. None of the studies discussed wind	21 only affect -- movement would not affect how
22 effect?	22 casings could be ejected or the direction in which
23 A. The wind is not an effect. I have not	23 they could be ejected except after it hit
24 seen any effect of winds on the cartridge case	24 something, that's what you're saying?
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1 ejection patterns except after point of impact.	1 A. No, that's not what I'm saying. It
2 Q. So studies, I'm asking about studies.	2 would be minimal alteration in the ejection
3 You haven't seen any studies that can have some	3 pattern because we're talking about the timing of
4 impact on --	4 the ejection, we're talking about 1/16th to 1/8th
5 A. I have not seen any studies.	5 of a second, so whatever that movement is, that's
6 Q. When you qualified as a police officer	6 within that 1/8th to 1/16th of a second would
7 with the SIG Sauer, that was indoors, right?	7 change that point of impact, and there is a
8 A. That was outdoors and indoors.	8 general area of impact which could be six to eight
9 Q. Did you ever have a shooting incident	9 feet.
10 as a police officer?	10 Q. Hill is running at the time he's
11 A. Thankfully no.	11 shooting, right?
12 Q. You never had to shoot anybody?	12 A. Not necessarily.
13 A. In the service.	13 Q. Let's look at it.
14 Q. I'm talking about as a police officer.	14 You disagree that's running? Doesn't
15 A. No.	15 that video slow clearly that he's running?
16 Q. Never was involved in a shoot-don't	16 A. He's moving fast.
17 shoot scenario as a police officer?	17 Q. So you distinguish that from running?
18 A. A real situation or --	18 MR. O'DIM: Is that a question?
19 Q. A real situation, not training, real	19 BY THE WITNESS:
20 situation.	20 A. It looks walking fast to me.
21 A. Well, I've been involved where I've had	21 BY MR. DICIANNI:
22 my firearm out, but I didn't have to shoot.	22 Q. Okay. Well, we can differ on that
23 Q. You didn't have to make a decision on	23 opinion. I'm no physicist, but Newton's laws of
24 whether to shoot?	24 motion tells us that everything that's moving in a

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1 direction that is going to continue moving in that
2 direction until something stops it, correct?
3 A. That's correct.
4 Q. So why doesn't that affect the ejection
5 pattern in this case that he's moving quickly, you
6 say walking fast, I say running, but he's moving
7 it quickly why wouldn't that affect it?
8 A. It would within that 1/8th to 1/16th of
9 a second.
10 Q. But where do you come up with those
11 numbers?
12 A. That's the amount of time it takes the
13 cartridge case to get ejected from the gun.
14 Q. 1/8th to what?
15 A. I think it's 1/16th to 1/8th of a
16 second. I'll have to look at my report. I want
17 to be accurate on that.
18 Q. So it's going to move forward with the
19 gun for 1/8th -- 1/16th to 1/8th of a second?
20 A. That would be the area that it would
21 be, whatever movement that gun has completed in
22 that 1/8th to 1/16th, that would be the movement
23 forward.
24 Q. How do you know that the momentum --

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1 using general physics principles, how do you know
2 that the momentum isn't going to affect its
3 movement forward movement?
4 A. Because the mechanical action of the
5 gun is under it spring tension. That's what's
6 pulling it out and it's operating under recoil.
7 Q. Is there hang time on this?
8 A. What's that?
9 Q. Is there hang time on these ejected
10 casings?
11 A. No. It's instant.
12 Q. Are you aware of any studies that have
13 been done regarding the effect of casing ejection
14 based on a running police officer?
15 A. I can't say there aren't any. I think
16 I may have read some, but I don't recall them
17 now.
18 Q. So you wouldn't have applied any of
19 those in your opinions in this case if you can't
20 remember them?
21 A. No. I didn't apply them in this case
22 because they wouldn't apply.
23 Q. So your opinion assumes that the
24 movement of Officer Hill in a forward direction

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1 didn't affect the location of the casings?
2 A. There was a minor alteration as opposed
3 to being standing still, but it's that 1/8th of a
4 second so it might change it by a foot, a foot or
5 two.
6 Q. How do you quantify that?
7 A. Because he is moving, the gun is moving
8 and then we have the point of impact so it would
9 be whatever he's moving within that 1/8th of a
10 second and I can't tell how fast he's moving in
11 that video.
12 Q. But the one foot impact you're just
13 speculating about that?
14 A. No. That would be the variance --
15 because the ejected cartridge case doesn't come
16 out exactly at the same angle of the shot. It
17 comes out generally to the right and rear.
18 There's going to be a slight variation.
19 Q. Right. Even under the most controlled
20 situations there could be variations?
21 A. But the variation would not include
22 going forward under any circumstances, not
23 according to the.
24 Q. You have studies to prove that?

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1 A. Yes, I've submitted them.
2 Q. If I told you that there are studies
3 that show that 24 percent of the time the gun like
4 this will not eject right and to the rear but will
5 eject sometimes forward, sometimes to the left,
6 sometimes elsewhere, would you disagree with
7 that?
8 MR. ODIM: Objection. Foundation.
9 BY THE WITNESS:
10 A. Please show them to me. I'd like to
11 share them with my colleagues.
12 BY MR. DICIANNI:
13 Q. All right. So the answer then is no,
14 you don't agree with that if you don't believe
15 there are such things, there are such reports?
16 A. Not in the conventional horizontal and
17 vertical plane that I see Officer Hill in.
18 Q. Which you're assuming that that's based
19 on his experience and his qualifications and
20 capabilities, you're assuming he was in that
21 perfectly conventional grip?
22 A. That's what the video shows.
23 Q. You can't see his grip in the video.
24 A. I can see what I see in the video.

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1 Q. Is that because you have that
2 enhanced -- that special monitor at home that
3 tells you -- you can even see his grip?
4 A. I can see his arms parallel to the
5 ground. I can see him in a traditional police
6 shooting position. I have no -- there is no
7 evidence that that gun is tilted or canted to the
8 left or to the right that it would effect the
9 normal ejection pattern.
10 Q. How do you know what's not canted to
11 the left or to the right?
12 A. I can see his hands in the video.
13 Q. You can see whether his hands are
14 straight up or certain degrees to the right or
15 left?
16 A. I see him walking in a very static
17 weaver stance type motion it forward moving fast.
18 Q. And that allows you to assume the grip
19 that he's using?
20 A. Yes. It's not an assumption. I can
21 see it, and that's how police are trained.
22 Q. So that's what you're basing it on, not
23 the super monitor that you have?
24 A. And that as well. That as well.

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1 Q. What about the cartridges bounced off
2 Hill, you're assuming that they didn't bounce off
3 Hill as he's moving forward?
4 A. I don't see any evidence that they
5 would have bounced off Hill.
6 Q. Right. So you're assuming that they
7 didn't?
8 A. The ejection pattern with his arms
9 fully extended the ejection pattern in my opinion
10 the cartridges would not be bouncing off him.
11 Q. Why not?
12 A. He has his arms fully extended. I know
13 I've looked at his height and I took into account
14 the fact his arms were approximately 34 inches
15 long so that his pistol would be out further than
16 his hands. So we've got about a three foot
17 distance from his body and with the ejection
18 taking place in about 1/8th of a second, even with
19 him moving forward the cartridge case and the gun
20 is designed to prevent cartridge casings from
21 coming back striking the shooter.
22 Q. So your opinions regarding the location
23 of the casings and what that tells you about when
24 the shots were fired assumes that he held the gun

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1 in a particular way that it wasn't canted, that
2 wind had no effect on it, that it didn't bounce
3 off Hill, that his running wouldn't have affected
4 it in any significant way, and that some other
5 outside source didn't affect where it ended up,
6 correct?
7 MR. ODIM: Objection. That's an incomplete
8 rendition of what his testimony was.
9 BY THE WITNESS:
10 A. I didn't address the issue of outside
11 source.
12 BY MR. DiCIANNI:
13 Q. Okay. Well, you would have had to
14 assume that no outside source did anything to
15 affect its location in order to use those
16 locations as a basis for an opinion, correct?
17 A. At least as far as the cartridge case
18 next to the tree, that's correct.
19 Q. What makes you so certain that
20 somebody, an EMT or somebody at the scene couldn't
21 have affected it?
22 A. It's possible that the cartridge case
23 on the sidewalk could have been disclosed by
24 location of an officer or one of the cruisers that

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1 actually pulled up onto the sidewalk.
2 As far as the cartridge case next to
3 the tree, even if a person had dislocated with his
4 foot, this was in a grassy area with some roots
5 with a tree. It would not have been dislocated
6 more than a foot or two from where it had -- its
7 final resting place.
8 Q. So where would you expect the casings
9 to end up had Hill fired as you say within .25 of
10 a second from 257 or thereabouts? Where would you
11 think they would end up?
12 A. In the driveway.
13 Q. On the surface of the driveway?
14 A. Point of impact on the surface of the
15 driveway somewhere approximately mid center about
16 six to eight feet of his right or right rear,
17 mostly to the right rear. And then from the point
18 of impact, it's possible it could have rolled.
19 Q. How confident are you with the .25
20 second firing calculation that you've used?
21 A. I am very confident with that.
22 Q. What do you base that on?
23 A. Officer Hill -- first of all, there are
24 studies that show the average trained police

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<p style="text-align: right;">Page 145</p> <p>1 officer can fire four to five shots per second, 2 which averages out to quarter of a second or less. 3 Officer Hill in my opinion is a very highly 4 qualified officer. It's my opinion that he could 5 easily match that standard. Based upon the 6 training record that I've read, SWAT team and his 7 frequency of training, I believe he would be able 8 to exceed the quarter of a second.</p> <p>9 Q. Per shot?</p> <p>10 A. For two shots he could most likely do 11 it less than a quarter of a second.</p> <p>12 Q. Less than a quarter of a second?</p> <p>13 A. Less than a quarter of a second.</p> <p>14 Q. Do you know what Fitt's law is?</p> <p>15 A. I don't.</p> <p>16 Q. So you did not apply Fitt's law at all 17 in this case; obviously you didn't?</p> <p>18 A. I didn't.</p> <p>19 MR. DiCIANNI: Let's take a break.</p> <p>20 (WHEREUPON, a recess was had.)</p> <p>21 MR. DiCIANNI: What was the last question?</p> <p>22 (WHEREUPON, the record was read by 23 the reporter.)</p> <p>24 BY MR. DiCIANNI:</p>	<p style="text-align: right;">Page 147</p> <p>1 the weight of the full bullet and casing, not the 2 casing?</p> <p>3 A. And the amount of propellant, but the 4 propellant wouldn't really have much in the way of 5 weight.</p> <p>6 MR. DiCIANNI: Let's mark this as the next 7 exhibit as Exhibit 5.</p> <p>8 (WHEREUPON, a certain document was 9 marked Scott Deposition Exhibit 10 No. 5 for identification, as of 11 04/04/2017.)</p> <p>12 BY MR. DiCIANNI:</p> <p>13 Q. Take a look at Exhibit No. 5. Can you 14 identify that document?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. This is a shooting scene measurements 18 form that I made up prior to going out to the 19 scene.</p> <p>20 Q. You made it prior to going out to the 21 scene, are you talking about columns one and two?</p> <p>22 A. Everything except for the measurement.</p> <p>23 Q. Everything except for column three, the 24 measurement column?</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. Did you consider the type of bullet 2 that was in Hill's gun in your determination about 3 the effect it might have on the location of the 4 casing?</p> <p>5 A. I took it into account.</p> <p>6 Q. What type of bullet was it?</p> <p>7 A. I can't remember right now what it was. 8 It was a 45 automatic jacketed hollow point, but I 9 forget the manufacturer.</p> <p>10 Q. What did the type of bullet tell you on 11 the effect it could have on the ejected casing?</p> <p>12 A. It wouldn't be the type of bullet 13 itself. It would be the pressure that's 14 generated.</p> <p>15 Q. Well, wouldn't the weight of the casing 16 differ based on the type of bullet?</p> <p>17 A. No.</p> <p>18 Q. Not at all?</p> <p>19 A. The casing is set by industry standard. 20 The bullet can change in weight but diameter will 21 not change.</p> <p>22 Q. What about the casing?</p> <p>23 A. The casing is standard. 24 Q. So it's only the bullet that affects</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Right.</p> <p>2 Q. You went out to the scene and you made 3 these measurements which are somewhat self 4 explanatory, right?</p> <p>5 A. Yes.</p> <p>6 Q. And from the frames, you were able to 7 determine a precise location of, for example, 8 Officer Hill at 257, 262, correct?</p> <p>9 A. Yes, yes.</p> <p>10 Q. And did you have any assistance with 11 this?</p> <p>12 A. Yes.</p> <p>13 Q. Who helped you?</p> <p>14 A. Michael Clancy.</p> <p>15 Q. Who is Michael Clancy?</p> <p>16 A. Michael Clancy, I think he's a retired 17 Chicago police officer. My understanding is he 18 does some investigative work for the law firm of 19 SDR.</p> <p>20 Q. You mean was the Duffy, now it's -- now 21 it's Stetler & Rotert. So they put you in touch 22 with this Michael Clancy and he helped you with 23 the measurements?</p> <p>24 A. He drove me out and basically I just</p>

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1 told him step on the tape measure over there I
2 want to take a measurement, but I took the actual
3 measurements.

4 Q. Which of your opinions did these
5 measurements have some impact on?

6 A. Once again, please.

7 Q. Which of your opinions did these
8 measurements have some effect on?

9 A. I believe all of them.

10 Q. In what way?

11 A. Do you want me to go down each one.

12 Q. Sure?

13 A. The discharged cartridge case on the
14 sidewalk, I measured it approximately 26 feet from
15 where Officer Hill was located, approximately
16 where he was located in the video. And so I was
17 looking at the 26 feet and that seemed a little
18 unusual from the point of impact, but then I
19 allowed for the arrival of the cruiser which drove
20 up on the -- it actually drove up through the
21 driveway where I would expect the cartridge case
22 to have been and then the officer got out of the
23 vehicle so there might have been some movement and
24 that was the cartridge case that was found

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1 underneath the cruiser after he had backed off.

2 Q. So let me stop you for a second.

3 Is Officer Hill in the same place at
4 257 and 262?

5 A. I think he's moved a couple of feet.

6 Q. Slightly?

7 A. Yes, forward, south he's moved south.

8 Q. Go ahead. Next one.

9 A. Then I made the same frames to the
10 cartridge case next to the tree and that came to
11 19 to 21 feet and this is where we eliminate the
12 ejection pattern going that far forward if Officer
13 Hill is in the driveway where he stated he made
14 the decision to shoot.

15 Q. What accounts for this range from 19 to
16 21?

17 A. Officer Hill testified that it was at
18 257 where he demonstrated Justus Howell turned
19 towards him with the gun and it was at that point
20 he had made the decision to shoot and so I
21 allowed -- from 257 to 262 I made an allowance for
22 the reaction time. From the time the brain said
23 pull the trigger to the time he actually is
24 capable of mechanically pulling the trigger takes

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1 about .31 or 1/3 of a second so I took 1/3 of the
2 15 frames and I added the -- those five frames to
3 come up to 262 as the possible location where he
4 may have fired a shot at least according to his
5 testimony. Then I look at that in relation to
6 could the cartridge case have gone 21 feet
7 forward, that's what that measurement was for.

8 Q. Do you quarrel with Officer Hill's
9 testimony that he made the decision to shoot at or
10 around 257?

11 A. Have a quarrel with it?

12 Q. Do you disagree with that?

13 A. That's his testimony.

14 Q. Does your study dispute that?

15 A. I don't believe he did.

16 Q. You don't believe he did?

17 A. Yes.

18 Q. Where do you believe he made the
19 decision to shoot?

20 A. Maybe I misunderstood the question.
21 The trajectory rods, in other words, the position
22 of Justus Howell at that point in time when I look
23 at 257 and I allow the one third of a second, when
24 I look at Justus Howell's posture, if he had fired

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1 at that point in time, those trajectory rods could
2 not -- the gunshot wounds as shown in the autopsy
3 would not -- the results would not have occurred
4 as they are shown.

5 Q. Yes. I understand that. And you think
6 he shot later?

7 A. Yes.

8 Q. We've been through that. We won't go
9 through it again.

10 A. Okay.

11 Q. So to you it's irrelevant as to when
12 the decision to shoot would have been, that
13 doesn't play a role in your analysis at all; your
14 focus is on when he shot?

15 A. I want to look at everything because I
16 want to be as accurate as I can.

17 Q. I'll come back to my question, then.

18 Do you dispute in any way or does your
19 study in any way dispute that Officer Hill decided
20 to shoot at 257?

21 A. No, not as far as his decision.

22 Q. And then 262, you get that number or
23 that frame based on the one third of a second that
24 it would take him to shoot?

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<p style="text-align: right;">Page 153</p> <p>1 A. Yes, if he had actually pulled the 2 trigger.</p> <p>3 Q. What was the next one that you had?</p> <p>4 A. The next one would be -- I'm actually 5 looking at both of these, Officer Hill at frame 6 257 and Officer Hill at frame 262 so I'm taking 7 them separately but I'm looking at the distance of 8 Mr. Howell from him at that point. I just wanted 9 to get a reference. I didn't know whether it 10 would be important or not but I want to get a 11 reference while I'm at the scene.</p> <p>12 The next one is the center of the 13 concrete pathway in front of the residence, 14 directly -- directly each of the cartridge case 15 placard number two next to the tree, that's ten 16 feet. What I'm unable to determine in the video 17 is the exact location Officer Hill is in relation 18 to that cartridge case next to the tree so I've 19 taken the neutral position of the center of the 20 pathway and used that as a determination to see 21 what effect that would have on the point of impact 22 of the cartridge case and when I look at it eight 23 to ten feet, what I actually was looking at here 24 was is there a possibility that the cartridge case</p>	<p style="text-align: right;">Page 155</p> <p>1 cartridge case and it shows the tree. 2 Q. The crime scene photo? 3 A. Yes, correct. 4 Q. I'm going to hand you and this ask you 5 to -- oh, you have it. Okay. Point out the 6 photograph that you're referring to. 7 A. I came to it right away. I don't know 8 what photograph it is. 9 Q. We'll identify it. 10 MS. AZARI: It's 837 I believe. 11 BY THE WITNESS: 12 A. Actually the next photo is just as 13 good. 14 BY MR. DiCIANNI: 15 Q. Is that it? 16 A. Yes, it is, and the next photo is shows 17 the placard a little bit better. 18 MR. DiCIANNI: I'm going to mark these two as 19 the next two exhibits and then we're going to put 20 them up on the screen. 21 (WHEREUPON, certain documents were 22 marked Scott Deposition Exhibit 23 Nos. 6 & 7 for identification, as 24 of 04/04/2017.)</p>
<p style="text-align: right;">Page 154</p> <p>1 could have struck the tree and bounced back and 2 it's possible but it doesn't seem probable given 3 the ten feet, the cartridge case would point of 4 impact be more closely to the six to eight foot 5 distance from officer Howell. I then -- I'm 6 sorry, that's the 12-foot, that's the next one, 7 the 12-foot. The cartridge case was actually at 8 ten feet.</p> <p>9 I then looked at -- there's a tree limb 10 that's directly above the cartridge case. I 11 wanted to see whether or not if Officer Hill was 12 directly next to the tree, could the cartridge 13 case have ejected upward far enough to obstruct 14 the tree that was growing on an angle. I wasn't 15 able to make a determination at that but it did 16 show that it's possible.</p> <p>17 Q. You know, I'm going to stop you there 18 because I'm not following you on that. I think we 19 should pull up the scene and you could explain to 20 me what you mean by that.</p> <p>21 What did you mean?</p> <p>22 A. Actually I was looking at still 23 photographs. There's actually several photographs 24 that show the exact location of this discharged</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MR. DiCIANNI: 2 Q. We were talking about distance from the 3 ground, distance to tree limb, is that where we 4 were? 5 A. Yes. The tree limb is on the left side 6 of this first photo so I measured at a point that 7 went directly up above the placard number two, 8 straight up, you can see it comes to a little bit 9 of a bend, it begins to arc upwards and I in 10 measured in that again area, five to six feet just 11 up above the cartridge case. 12 Q. The bottom of that limb, how is it five 13 to six feet? 14 A. Five to six feet because I'm accounting 15 for a little bit of the curvature as it goes 16 upwards. 17 Q. Did that play any role in any of your 18 conclusions? 19 A. It's my belief that the discharged 20 cartridge case would not have struck that tree 21 limb. 22 Q. Based on what? 23 A. The height of the gun above the ground 24 and I looked at Officer Hill's height, for a</p>

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<p style="text-align: right;">Page 157</p> <p>1 person of his height, the gun would have been 2 approximately 49 inches, 47 to 50 inches above the 3 ground if he was holding it level and so for the 4 cartridge case to come out of the pistol where he 5 would have been located over on the pathway, that 6 limb would not have been an obstruction that it 7 would have struck on its ejection path.</p> <p>8 Q. Wouldn't be a determination that you 9 would make by measuring east to west?</p> <p>10 A. No because I'm placing -- I don't know 11 the specific position and I'm placing Officer Hill 12 in as neutral a position as I can which is the 13 center of the concrete pathway and that's also 14 based upon his own testimony that when he was 15 moving south in Spaeth's he continued south across 16 the driveway and the concrete pathway in front of 17 that house is in line with the concrete pathway in 18 front of Spaeth's.</p> <p>19 Q. Go ahead.</p> <p>20 A. I did this before I went there. I 21 didn't know what value it might have but I did 22 want to find out what was the space that Officer 23 Hill might have had in between the parked motor 24 vehicle that we see in the vehicle that are in</p>	<p style="text-align: right;">Page 159</p> <p>1 MR. ODIM: Objection. 2 BY THE WITNESS: 3 A. I'll answer that. I don't want to make 4 anybody out to be a liar. I just want to present 5 the physical evidence the way it is and let the 6 finder of fact make that decision. 7 BY MR. DiCIANNI: 8 Q. Did this last determination, the 9 14 feet measurement, did that play any role in any 10 of your opinions? 11 A. Well, I know I mention in my report 12 that it's inconsistent with Officer Hill's 13 testimony. 14 Q. I know but -- 15 A. I mean -- 16 Q. In what way is that relevant to any of 17 your opinions? 18 A. Well, it just shows that Officer Hill 19 had his pistol out before he testified that he 20 even saw the gun. 21 Q. Okay. And in what way is that relevant 22 to your opinions? 23 A. Well, I'm just pointing out the 24 scientific facts, what the video shows.</p>
<p style="text-align: right;">Page 158</p> <p>1 front of Spaeth's Woodworking, I measured it, 2 that's not data that is important to me in this 3 case.</p> <p>4 Q. Next one.</p> <p>5 A. The discharged cartridge case on the 6 sidewalk in relation to the north south linear 7 distance of cartridge case number two is seven 8 feet, not accounting for east west and the last 9 one I took Officer Hill in front of Spaeth's with 10 his arms race in what I call the primed to shoot 11 orientation to the location at the beginning of 12 the asphalt driveway where Officer Hill is seen in 13 frame 257, this is based upon his testimony that 14 he did not -- my recollection is he stated that he 15 did not aim his pistol at Justus Howell until he 16 had reached the driveway. The video to me shows 17 that he exited from behind the tree in front of 18 Spaeth's and he actually had his pistol out 19 pointed at least in a southerly direction 14 feet 20 before the driveway.</p> <p>21 Q. Before he says he did?</p> <p>22 A. Yes.</p> <p>23 Q. And that is because you wanted to make 24 him out to be a liar?</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. It doesn't affect your opinion that 2 Officer Hill shot later than he -- you contend his 3 testimony established? 4 A. No. I'm just regard recording -- what 5 I'm doing is I'm documenting a crime scene 6 unfortunately 20 months later, but I'm documenting 7 as best I can based upon the available evidence 8 I've got to look at. 9 Q. There's dozens of things you can 10 document at a scene so you make some evidentiary 11 evaluation as to what you're going to document, 12 correct? 13 MR. ODIM: Objection. That's not what his 14 testimony is. 15 BY MR. DiCIANNI: 16 Q. Correct? 17 A. Like I said, I did this before I went 18 to the scene. What evidentiary value it might 19 have later would be something I would be glad that 20 I took the measurement in case I needed it. 21 Q. And it turned out you really didn't? 22 MR. ODIM: Objection. Is that a question? 23 MR. DiCIANNI: Yes. 24 BY MR. DiCIANNI:</p>

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<p style="text-align: right;">Page 161</p> <p>1 Q. It turns out you really didn't need it, 2 right?</p> <p>3 A. It is what it is and if I'm asked to 4 testify to it, it's of value to someone else.</p> <p>5 Q. Your report goes on to discuss -- your 6 opinion goes on to talk about Officer Gildea's 7 location when he heard the gunshots and you 8 believe that contradicts Officer Hill's account of 9 when he fired those shots; is that accurate?</p> <p>10 A. Yes.</p> <p>11 Q. You base that on the video, correct?</p> <p>12 A. On the video and Officer Gildea's 13 testimony.</p> <p>14 Q. And the video would show that on or 15 around 257 Gildea is still in the video and 16 doesn't disappear from the video until about 273, 17 74?</p> <p>18 A. Correct.</p> <p>19 Q. So you want to draw a coordination 20 between when Gildea says he heard the shots and 21 the frames on the video, correct?</p> <p>22 A. Well, I'm looking at his testimony and 23 I'm comparing it to the frames on the video.</p> <p>24 Q. This kind of gets back to the question</p>	<p style="text-align: right;">Page 163</p> <p>1 side of the video until he gets around to the 2 south side of the house. That's the approximate 3 time that officer Howell is obstructed by the tree 4 and that's the point at which the victim is on the 5 ground.</p> <p>6 Q. Did you measure his strides in the 7 video?</p> <p>8 A. I did not.</p> <p>9 Q. Are you familiar with any studies that 10 would support the conclusion you made in this case 11 that Officer Gildea's testimony would be reliable 12 forensic evidence to base an opinion on in this 13 instance?</p> <p>14 A. I know there's studies on police 15 officers' physical standards and there are studies 16 on athletes covering getting to first base, 17 et cetera so I try to make a logical conclusion 18 based upon that.</p> <p>19 Q. Did you apply any of those studies?</p> <p>20 A. I did.</p> <p>21 Q. Which ones?</p> <p>22 A. Well, I took the amount of time it 23 would take the average person to cover 24 approximately 40 feet and it's about one to one</p>
<p style="text-align: right;">Page 162</p> <p>1 that I asked that we talked about earlier about 2 the peril in using testimony or oral statements as 3 forensic evidence. That's what you're doing here, 4 right?</p> <p>5 A. No.</p> <p>6 Q. In what way are you not doing that?</p> <p>7 A. We can see Officer Gildea in the video 8 up to where he disappears from view at 9 approximately 273 to 274. So when we evaluate the 10 testimony that he did not hear the gunshots until 11 he reached the southeast corner, actually it was 12 the south part of the house near the electrical 13 box on 24th Avenue I believe it is that he heard 14 the gunshots. When I look at the distance where 15 Officer Gildea is located in the video and then to 16 where he stated he heard the gunshots, it's a 17 distance of approximately 35 to 40 feet. So what 18 that's telling me is there is an issue of time 19 involved, how long does it take Officer Gildea to 20 cover 40-some odd feet and does that conflict or 21 support the fact that Officer Hill hired at a 22 later time than he claims to have fired. So what 23 I'm pointing out in this is the time frame that it 24 takes Officer Gildea to leave the video, go out of</p>	<p style="text-align: right;">Page 164</p> <p>1 and a half seconds.</p> <p>2 Q. What about an officer who is carrying 3 gear?</p> <p>4 A. I didn't account for that.</p> <p>5 Q. Are you familiar with any of the 6 studies about the time it takes an officer 7 carrying gear to travel from A to B on foot?</p> <p>8 A. I didn't use those in this shooting 9 incident.</p> <p>10 Q. Are you aware of any of the studies on 11 the effect of -- lit me rephrase that.</p> <p>12 Are you familiar with any of the 13 studies that discuss the discrepancy between the 14 actual and the recalled path of travel of 15 witnesses?</p> <p>16 MR. ODOM: Objection. Foundation.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I think that's beyond the role of my 19 retainment in this case.</p> <p>20 BY MR. DiCIANNI:</p> <p>21 Q. So you didn't apply any of those 22 studies?</p> <p>23 A. I did not.</p> <p>24 Q. You did not apply any study regarding a</p>

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<p style="text-align: right;">Page 165</p> <p>1 standard deviation from time travel on foot that 2 results from a person being in a conflict 3 situation and trying to remember the details? 4 MR. ODIM: Objection. Foundation and totally 5 ambiguous. 6 BY THE WITNESS: 7 A. I did not apply that. 8 BY MR. DiCIANNI: 9 Q. So putting all of your conclusions 10 together, based on all of the evidence that you 11 considered, tell us what you think happened in 12 this case. 13 MR. ODIM: Objection. This witness has given 14 certain opinions, those opinions are encompassed 15 in this report. The question goes way beyond what 16 he is stating an opinion about. 17 BY MR. DiCIANNI: 18 Q. Go ahead. 19 A. My report stands for itself. 20 Q. So if I can summarize it, you believe 21 that Officer Hill shot -- well, strike that. 22 You've testified earlier about based on 23 your opinions when the left-sided shot took place 24 in the frames, correct, which frames those shots</p>	<p style="text-align: right;">Page 167</p> <p>1 I know you excluded it as something you 2 considered and you relied on in arriving at your 3 opinions, but tell me what Item J is on your 4 source materials, the reports of measurements by 5 the Lake County major crimes task force? 6 A. There is a document I believe it's 7 called that, measurements by the Lake County task 8 force, I looked at that document and in my opinion 9 it was completely no reference point, no diagram, 10 no diagram of where evidence was located, 11 measurements from the middle of the yard to 12 another point, basically they were of no value 13 whatsoever. 14 Q. Is that in your records, those 15 measurements? 16 A. I have the document. I copied it over. 17 It's on the disk. 18 Q. It's on the disk? 19 A. It's on the disk. 20 Q. Let's pull it up. 21 A. When I copied it over, the properties 22 did not copy. 23 MS. MORAN: Off the record for a minute. 24 (WHEREUPON, discussion was had off</p>
<p style="text-align: right;">Page 166</p> <p>1 had taken place in? 2 A. Yes. 3 Q. And then you testified before regarding 4 which of the frames the right sided shot could 5 have taken place in, correct? 6 A. I think I made an exclusion on one part 7 of that based upon the posture of Mr. Howell. I 8 don't recall what the frames were but I recall 9 that. 10 Q. When you say exclusion, you mean that 11 you only identify the frames where the right-sided 12 shot couldn't have occurred? 13 A. Correct. 14 Q. So you're not -- you're unable to say 15 with any degree of scientific certainty when the 16 right sided shot could have occurred? 17 A. I think I did point out some 18 possibilities where his orientation and the 19 posture of his body made it possible for those 20 trajectory rods to line up with the muzzle of the 21 gun. 22 Q. I don't recall that, but I know we've 23 been through it. So I don't think we need to go 24 through it again.</p>	<p style="text-align: right;">Page 168</p> <p>1 the record.) 2 BY MR. DiCIANNI: 3 Q. No. 67, Biodynamics Engineering, do you 4 know what that is? 5 A. I don't know what that is. I didn't 6 use it. 7 Q. Could you pull that up? So earlier I'd 8 asked you about whether you had seen or relied on 9 or responded to a computer diagram such as this, 10 right, and you said you didn't? 11 A. Yes, and that was incorrect now that I 12 see it but I don't remember looking at this. 13 Q. You didn't analyze it in any way? 14 A. No, I didn't. 15 Q. Why not? 16 A. Because I'm doing an independent 17 examination. 18 MS. MORAN: For the record, you referred to 19 it as an animation earlier. 20 BY MR. DiCIANNI: 21 Q. You knew what I meant? 22 A. Actually I didn't. 23 Q. You didn't? 24 A. Right.</p>

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1 MS. MORAN: He told you he didn't at the time 2 as the report will reflect.	1 A. Civilian witnesses?
3 BY MR. DiCIANNI:	2 Q. Yes.
4 Q. What we just looked at bioengineering, 5 that's not J?	3 A. I understand there were. I'm not 4 familiar with their statements.
6 A. That's not J.	5 Q. Why wouldn't you have reviewed those 6 and used that as forensic evidence to shed light 7 on your opinion regarding Howell running down the 8 street with a gun in his hand?
7 Q. We want to pull up J and see what that 8 is.	9 A. Actually I think you just answered your 10 own question with the previous question. I 11 wouldn't use witness statements by themselves, in 12 and of themselves I wouldn't use witness 13 statements.
9 What would it be listed as on your 10 files?	14 Q. You would use a witness statement in 15 connection with the video, correct?
11 A. I'm going to take a guess here. It 12 might be in the technician reports. Measurements, 13 Kueber's measurements, that's probably it there.	16 A. Because they're in the video.
14 Q. Is that what J is?	17 Q. Who is in the video?
15 A. Yes, that's one of them.	18 A. Officer Gildea is in the video.
16 Q. What's the other one?	19 Q. That's how you make -- that's where you 20 draw the line, if he's in the video you'll use his 21 statement as forensic evidence?
17 A. That's the other one. There's no 18 reference point. It's meaningless.	22 A. Well, it shows where he is. It's 23 evidence.
19 Q. What was Honda Fit?	24 Q. Your opinion that the video does not
20 A. I don't know.	
21 Q. You didn't use it or refer to it for 22 any of your opinions?	
23 A. I looked at it but I didn't use it.	
24 Q. You disagree that using testimony or	
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1 using a witness statement is an inappropriate use 2 of -- it's inappropriate to use a witness 3 statement or testimony as forensic evidence?	1 show Howell turning in the way that Hill describes 2 it in his deposition, how would you test that 3 opinion?
4 MR. ODIM: Objection. Asked and answered.	4 A. By looking at the demonstration done by 5 Officer Hill and then looking at the video and 6 seeing if I can see the same or similar turn which 7 I tested.
5 BY THE WITNESS:	8 Q. So it's what you did?
6 A. I don't use witness statements as the 7 basis for scientific conclusions, correct.	9 A. It's what I did and I couldn't find it.
8 BY MR. DiCIANNI:	10 Q. And your opinion that Hill fired later 11 than you believe his testimony demonstrates, how 12 would you test that?
9 Q. But you use them as forensic evidence?	13 A. By the location of the discharged 14 cartridge cases, by the synchronization of the 15 trajectory rods from the autopsy in conjunction 16 with the posture of Mr. Howell at the point that 17 Officer Hill stated that he shot him.
10 A. I use them -- I would compare the 11 scientific evidence to the statements to see 12 whether they agree.	18 Q. Now you didn't do anything to test 19 those opinions outside of your review of the 20 evidence, correct?
13 Q. Okay. You did that with Gildea's 14 statement, right?	21 A. Correct.
15 A. I did that -- I took Gildea's statement 16 and I took the video and the distance factor and I 17 synchronized that.	22 Q. So looking at your CV, you were in the 23 military?
18 Q. Why didn't you read the witness 19 statements that confirm that Justus was running 20 with a gun in his hand down Galilee?	24 A. I was.
21 A. Witness statements?	
22 Q. Are you aware there's witnesses who saw 23 him running down the street with a gun in his 24 hand?	

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Page 173		Page 175
1 Q. And that would have been from '63 to 2 '66?	1 Q. When did you start college? 2 A. Well, I started junior college right 3 after I got out of the service, is sometime I 4 believe in 1967, actually during mechanical 5 engineering program that was also considered part 6 of college, part of Wentworth Institute.	
3 A. Yes, sir.	7 Q. You worked for General Electric it was? 8 A. Yes, it was.	
4 Q. And did you see combat?	9 Q. You were a full-time employee?	
5 A. I did.	10 A. Yes.	
6 Q. Where?	11 Q. And you joined the Massachusetts State 12 Police in 1973?	
7 A. Dominican Republic 1965.	13 A. Yes, I did.	
8 Q. What was that?	14 Q. Was that directly from General 15 Electric?	
9 A. That was called Operation Power Pack. 10 I can't recall too much about it. I was only 18, 11 19 at the time. The armed forces had been sent 12 down to protect I believe it was American students 13 that attending school in the Dominican Republic 14 and to withdraw them from what was a civil 15 insurrection at the time.	16 A. No, it was not. 17 Q. What did you do in between? 18 A. In between I had know position in 19 mechanical engineering. I worked for a large firm 20 out of New York, rise letter lap incorporation, 21 heating ventilating air conditioning on a 35 story 22 office tower building doing mechanical work. 23 Q. You don't have an engineering degree? 24 A. No, no.	
16 Q. Did you actually get into some type of 17 a fight?		
18 A. I was in combat.		
19 Q. Did you shoot somebody?		
20 A. I did.		
21 Q. Who did you shoot?		
22 A. I don't know who it was.		
23 Q. Was it one of the rebels?		
24 A. It was.		
Page 174		
1 Q. What were the circumstances?	1 Q. No engineering certificates?	Page 176
2 A. Shot him with a 50 caliber machine gun, 3 two of them.	2 A. I didn't complete it. Then I went into 3 accounting and finance, career change.	
4 Q. What were they doing?	4 Q. Another career change to go into the 5 police?	
5 A. They were shooting out of the window of 6 the Holiday Inn hotel at us.	6 A. Yes, I did.	
7 Q. You were on the ground?	7 Q. Was that your first law enforcement job 8 in Massachusetts?	
8 A. I was on the ground.	9 A. Yes, it was.	
9 Q. Did you fire up into the window at 10 them?	10 Q. You weren't military police or anything 11 like that?	
11 A. Yes.	12 A. No.	
12 Q. Did you get them?	13 Q. So you served according to your CV as 14 a -- would it be a patrol officer from '73 to '79?	
13 A. Yes.	15 A. I served in a rural State Police 16 barracks. We had very little patrol. We did 17 police services, the towns are very small; they 18 had no police department, in the evening and 19 midnight hours.	
14 Q. How do you know?	20 Q. What town was it?	
15 A. Fell out of the window.	21 A. There was a number of towns. I can 22 list them for you if you want.	
16 Q. Any other types of combat?	23 Q. Where were you born and raised?	
17 A. No.	24 A. I was born in Lynn, Massachusetts,	
18 Q. When you got out of the Army in '66, 19 what did you do?		
20 A. I went into mechanical engineering at 21 the General Electric company, went through the 22 apprenticeship program, a combination of 23 mechanical engineering and learning manufacturing 24 processes, manufacturing jet engines.		

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Page 177	Page 179
1 L-y-n-n.	1 officer.
2 Q. Is that where you lived until college?	2 Q. But you were in an administrative role?
3 A. I moved to Peabody, Massachusetts.	3 A. Yes.
4 Q. In '79 you went to the ballistics	4 Q. Why did you leave in '98?
5 section of the Massachusetts State Police?	5 A. My wife and I had the business that she
6 A. Correct.	6 still has, it was Eclipse Signs and Truck
7 Q. And you served there until '92 when you	7 Lettering at the time and I had finish my 25 years
8 became the shift commander at JHQ?	8 and four months and it was time to move on to the
9 A. Correct.	9 next phase of my life.
10 Q. What were your duties there?	10 Q. Her business is truck lettering?
11 A. At GHQ?	11 A. Signs and truck lettering.
12 Q. Yes.	12 Q. She makes signs?
13 A. I was in charge of the 9/11 system,	13 A. Gold leaf signs, window lettering,
14 civilian dispatchers, state wide dispatch system	14 boats, planes, trailer trucks, airplanes.
15 and I was overseeing the deployment of resources	15 Q. She did that in Massachusetts and then
16 to local police department, helicopter, SWAT	16 in Arizona?
17 teams, et cetera.	17 A. Yes.
18 Q. So that did not involve forensic	18 Q. Still does?
19 evaluations or analysis?	19 A. Still does.
20 A. I was continuing to do some old cases	20 Q. You have as professional employment
21 at the time and I did internal police shooting	21 from '67 to -- when did you start your business?
22 investigations.	22 A. 2002.
23 Q. As part of -- in a supervisory role?	23 Q. What did you do from '98 to '02?
24 A. Yes.	24 A. I worked with my wife in the signs and
Page 178	Page 180
1 Q. Did you do the actual investigation	1 truck lettering business. I did a few cases for
2 yourself or you got reports from the investigators	2 some attorneys that I knew but very few. I'm
3 and make decisions based on that?	3 talking less than probably less than 15.
4 A. I did the actual internal	4 Q. Did you do any consultation, expert
5 investigation.	5 witness type consultation while you were a police
6 Q. It looks like from '92 until you left	6 officer?
7 in would it have been '98?	7 A. Not permitted.
8 A. 1998.	8 Q. So you didn't start doing that until
9 Q. You did not have a role as an	9 you left?
10 investigator?	10 A. Correct.
11 A. I did. An internal investigator.	11 Q. Did you do any of that in
12 Q. I see. Staff inspector position?	12 Massachusetts?
13 A. And in the positions of shift	13 A. I did not.
14 commander, I conducted internal investigations,	14 Q. So before you actually set up what
15 mostly misconduct and civilian complaints.	15 would be a formal business, you did some
16 Q. So the majority of your experience in	16 consultation occasionally?
17 forensic evidence evaluation took place from '79	17 A. Yes.
18 to '92 in the ballistic section, at least when you	18 Q. And then in '02 you launched your
19 were a police officer?	19 business?
20 A. The forensic aspect of it and my	20 A. That's correct.
21 independent work since 2002.	21 Q. Have you ever had any partners?
22 Q. From '92 until you left the department	22 A. I have not.
23 you were basically an administrator?	23 Q. Have you ever had any employees?
24 A. Yes, I was considered a commissioned	24 A. Well, I don't want to consider my wife

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<p style="text-align: right;">Page 181</p> <p>1 an employee, but she helps me on occasion with 2 some of the administrative and she's the 3 accountant shall we say. 4 Q. Other than that, no employees? 5 A. That's correct. 6 Q. And that's been the case since you 7 started the business? 8 A. Correct. 9 Q. How many cases a year do you generally 10 handle roughly? 11 A. It's been -- it's increased over the 12 last five years significantly. I average over the 13 last five years 40 to 50 cases, 35 to 45 cases per 14 year. 15 Q. These would all be litigation 16 consultations? 17 A. Criminal cases. Some of them involve 18 working with architects and engineers conducting 19 testing. I do work for the military. 20 Q. I'll include all of that in litigation, 21 if there is a case involved, criminal, civil -- 22 A. I do some voluntary work for innocence 23 projects and families on occasion. 24 Q. You don't teach?</p>	<p style="text-align: right;">Page 183</p> <p>1 the military on some prototype weapons. 2 Q. Did you do any of these tests in 3 connection with cases you were consulting on? 4 A. Yes. 5 Q. How many of them approximately? 6 A. Since 2002? 7 Q. Yes. 8 A. Or are you including State Police? 9 Q. No, since '02. 10 A. I would say less than 50. 11 Q. So 50 times you were asked to give an 12 opinion regarding some ejection issue, and you did 13 a test? 14 A. I misunderstood your question. 15 I've given testimony on ejection 16 patterns without conducting tests, but in 50 cases 17 or less, I've actually conducted the actual 18 testing. 19 Q. In connection with your consultation? 20 A. Right. 21 Q. I did understand. 22 Why have you not published anything 23 regarding your tests? 24 A. I just don't care to publish material.</p>
<p style="text-align: right;">Page 182</p> <p>1 A. I try to do one presentation per year 2 if time permits. It's been difficult. 3 Q. Have you published at all? 4 A. I do not publish. 5 Q. Never published? 6 A. Never published. 7 Q. Why not? 8 A. First of all, with the State Police it 9 was prohibited by the rules and regulations and I 10 prefer to give scientific oral verbal 11 presentations with abstracts as opposed to formal 12 publications. 13 Q. On Page 4 of your report you say you've 14 personally conducted of generally accepted tests 15 for terming discharged cartridge case ejection 16 patterns including actual testing of semiautomatic 17 pistols, full automatic pistols and machine guns 18 and submachine guns. That's an accurate 19 statement? 20 A. Yes, it is. 21 Q. Where did you conduct these tests? 22 A. I conduct them currently as needed. 23 The majority of them I conducted with the 24 Massachusetts State Police, and I've worked with</p>	<p style="text-align: right;">Page 184</p> <p>1 I prefer scientific presentations. 2 Q. Well, on Page 5 you say you have 3 presented peer-reviewed scientific forensic 4 presentations at numerous college and 5 universities, seminars for district attorneys and 6 private attorneys, et cetera. I'm not understand 7 peer-reviewed in that context. 8 What do you mean by peer-reviewed? 9 A. This goes outside of the scope of 10 ejection pattern testing? 11 Q. Yes. 12 A. Okay. So this would include all 13 forensic testing, tool marks, gunshot distance 14 determination, how it's done, the generally 15 accepted methodology, determining shooter 16 orientation, movement of the muzzle of the gun how 17 much does that mean being off target at various 18 distances, talking about evidence collection, 19 preservation, talking with EMTs, describing to 20 them that when they see gunshot holes in clothing, 21 preferably they wouldn't take the scissors, that 22 type of work, and then I've been over to the 23 colleges and universities at the request of some 24 of the professors, a lot of the district attorneys</p>

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1 and assistant district attorneys were adjunct
2 professors. I've been over to Harvard with Dr. --
3 Professor Dershowitz, moot court for the students,
4 that type of thing.
5 Q. I get the picture.
6 I guess what I don't understand is how
7 are these presentations peer-reviewed?
8 A. Oh, they were approved the State Police
9 approved -- the State Police would get a request.
10 I would prepare an abstract. The abstract would
11 be reviewed for accuracy and then be approved for
12 me to, then, present it.
13 Q. In your State Police days?
14 A. Yes.
15 Q. Not since then?
16 A. Since then I just submit abstracts to a
17 committee such as the American Academy of Forensic
18 Sciences, and it's reviewed by them.
19 Q. And they invite you to speak?
20 A. They review the abstract and then they
21 make a decision whether or not I can present it.
22 Q. You consider that peer-reviewed?
23 A. Yes.
24 Q. Going to your case list, first of all,

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1 out-of-pocket airfare, expenses, lodging,
2 et cetera.
3 Q. So about 11,000 in fees?
4 A. I think so, yes.
5 Q. Roughly?
6 A. Yes.
7 Q. Do you keep time records?
8 A. I do, right.
9 Q. Is there a software program you use?
10 A. I use a software program.
11 Q. What's it called?
12 A. I actually developed it on Microsoft
13 Word for Windows. I developed my own program.
14 Q. Do you have all your task activities
15 that you itemized?
16 A. I do.
17 Q. So 11,000 in fees and that doesn't
18 include today?
19 A. It does not include today.
20 Q. And it would not include any work going
21 forward or any trial testimony, correct?
22 A. That's correct.
23 Q. Are you expecting to do a rebuttal
24 opinion in this case based on any experts we might

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1 you didn't give us bill records, you said you
2 charge \$395 an hour, is that generally what you
3 charge for all of your consultation cases?
4 A. Yes.
5 Q. That's what you're charging in this
6 case?
7 A. Yes.
8 Q. Did that includes whatever the task is
9 that you perform in connection with the case?
10 A. My travel time is at a lower rate,
11 and out-of-pocket expenses would be just at
12 cost.
13 Q. But your \$395 per hour applies to
14 testimony, to whatever you're doing?
15 A. Professional work, correct.
16 Q. How many hours have you put in in this
17 case so far?
18 A. I don't know if I can tell you the
19 hours. I can tell you the amount.
20 Q. Okay. What's the amount?
21 A. Which includes out-of-pocket expenses,
22 I think have received a total of \$14,000 which
23 includes part of this travel for this deposition
24 and from that would be approximately \$3,000 in

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1 disclose?
2 MR. ODIM: Objection. There's been no
3 disclosure of anything.
4 BY MR. DiCIANNI:
5 Q. That wasn't my question. Go ahead.
6 You can answer.
7 A. I have not been asked to do anything
8 beyond this deposition.
9 Q. What do you roughly make per case,
10 roughly? What would be an average amount that you
11 would charge per case?
12 A. It's going to depend upon the evidence
13 and the complexity of it. I think it could
14 average from -- I think the most in one case was
15 over \$30,000 and there are some cases I do pro
16 bono, but it's anywhere in between, but I would
17 say that I think the best way I could put it is
18 15 hours would be what my starting point would be,
19 do the best I can within that and then if more
20 time is necessary, I work from there.
21 Q. So 50 an hour is on the simplest type
22 of case and \$30,000 would be the more -- the most
23 complex type of case?
24 A. Yeah, and that includes travel like to

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1 Florida and very complex testing.	1 Q. Not where you were brought in to be a
2 Q. How does this case rank in terms of	2 consultant where somebody else is challenging an
3 complexity? Is it at the top end or the low end?	3 expert?
4 A. It's not complex to me. I don't want	4 A. Correct. Let's see. October of 2014
5 to say it's on the low end, but it's less than	5 I'm not sure, Munoz, I did not testify but there
6 medium.	6 may have been a Daubert issue for me, but I did
7 Q. So below the middle?	7 not testify except at a deposition. March 2014,
8 A. Yes.	8 this is in numerical order by date, Torres versus
9 Q. I want to look at your case list.	9 Albuquerque Police Department, that was a Daubert
10 We talked earlier in the deposition	10 hearing and a bench trial combined. I testified
11 about Daubert consultations that you've done and	11 at that.
12 one of the things you mentioned the Linda Frias	12 Q. Daubert challenge to your testimony?
13 case?	13 A. Correct, yes. The January 2014,
14 A. Correct.	14 Kentucky versus Pharo Wilson. My recollection is
15 Q. And you mentioned the Babbitt case on	15 I have it listed as a trial, but I believe there
16 the following page, correct?	16 was a Daubert issue involved in that at the time.
17 A. Yes.	17 Q. Again, challenging your testimony?
18 Q. And you mentioned that this list would	18 A. Challenging my testimony. As a matter
19 refresh your memory about other Daubert	19 of fact, it's actually listed in the next -- it's
20 consultations you've done?	20 in the next line, it says Daubert hearing.
21 A. Yes, it would.	21 Q. Sure.
22 Q. So I'm going to ask you to tell us	22 A. That's it.
23 which cases on this list would be cases where you	23 Q. Have you ever done a Daubert
24 did a Daubert consultation?	24 consultation where you were the person who was
Page 190	
1 A. First page December 2016, AZ versus	1 challenging somebody else's testimony?
2 Nicholas Lopez in Gila County. It's listed as a	2 A. I have.
3 Daubert hearing. Frias case has already been	3 Q. Is it on this list?
4 testified to, D. Babbitt I testified to, that's on	4 A. They've occurred prior to that.
5 the second page. I'm not sure about Arizona	5 Q. Prior to this?
6 versus Cory Candler. I know I testified at a	6 A. Yes.
7 trial. I'm not sure if there was a Daubert	7 Q. Do you remember the names?
8 hearing involved during the trial.	8 A. I would have to go back to my files. I
9 Q. Which one?	9 know one was in Indiana. I don't remember the
10 A. About half way down, January 2016, AZ	10 name of the case.
11 versus Cory Candler.	11 Q. Do you remember the area of forensic
12 Q. Arizona follows Daubert I assume?	12 examination that was involved?
13 A. Yes, it does.	13 A. Tool marks, tool mark identification.
14 Q. What else?	14 Q. Has your testimony ever been excluded?
15 A. December of 2014, N.G. and L.G. Minors	15 A. No.
16 by and through their Guardian ad Litem, et cetera,	16 Q. Never?
17 it's plaintiff's versus the county of Los Angeles,	17 A. No.
18 that included a Daubert issue. I don't recall	18 Q. What about on the Sam Pomier case, was
19 actually testifying at it, but there was a Daubert	19 your evidence excluded in that case?
20 motion before the court.	20 A. I don't recall a Daubert hearing, but I
21 Q. When you say a Daubert motion, are any	21 testified in that case.
22 of these cases where you were being challenged	22 Q. So have you ever had part of your
23 based on Daubert, some of them were?	23 testimony excluded?
24 A. Yes, yes.	24 A. Not from a qualification perspective.
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 1 There have been some rulings where the content of
 2 my testimony was excluded for whatever reason, the
 3 judge decided is that it was not to be admitted to
 4 the jury.

5 MR. DiCIANNI: I'm going to take a break. We
 6 may be done.

7 (WHEREUPON, a recess was had.)

8 MR. DiCIANNI: We don't have further
 9 questions.

10 MR. ODIM: No questions. We're reserving
 11 signature.

12 FURTHER DEPONENT SAITH NOT.

13

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 1 DEPOSITION ERRATA SHEET
 2 Page No. Line No. Change to:
 3
 4 Reason for change:
 5 Page No. Line No. Change to:
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 7 Reason for change:
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 9 Page No. Line No. Change to:
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 11 Reason for change:
 12 Page No. Line No. Change to:
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 14 Reason for change:
 15 Page No. Line No. Change to:
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 17 Reason for change:
 18 Page No. Line No. Change to:
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 20 Reason for change:
 21
 22
 23 SIGNATURE: DATE:
 24 RONALD SCOTT

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 1 DEPOSITION ERRATA SHEET
 2 Assignment No. J0540621
 3 ALICE HOWELL, Independent)
 4 Administrator of the Estate)
 5 of JUSTUS HOWELL,)
 6 Plaintiff,) No. 16 CV 3949
 7 -vs-)
 8 CITY OF ZION, a municipal)
 9 corporation, OFFICER ERIC)
 10 HILL, (#47),)
 11 Defendants.)
 12 DECLARATION UNDER PENALTY OF PERJURY
 13 I declare under penalty of perjury that
 14 I have read the entire transcript of my deposition
 15 taken in the captioned matter or the same has been
 16 read to me, and the same is true and accurate,
 17 save and except for changes and/or corrections, if
 18 any, as indicated by me on the DEPOSITION ERRATA
 19 SHEET hereof, with the understanding that I offer
 20 these changes as if still under oath.
 21 Signed on the _____ day of
 22 _____, 20 _____.
 23
 24 RONALD SCOTT

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 4 Reason for change:
 5 Page No. Line No. Change to:
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1 STATE OF ILLINOIS)	1 EXAMINATION
2) SS:	2
3 COUNTY OF K A N E)	3 RONALD R. SCOTT
4 I, THERESA A. VORKAPIC, a Notary Public	4 Examination
5 within and for the County of Kane, State of	5 By Mr. DiCianni
6 Illinois, and a Certified Shorthand Reporter, CSR	6
7 License No. 84-2589, of said state, do hereby	7
8 certify:	8 E X H I B I T S
9 That previous to the commencement of	9 Exhibit No. 1 20 17
10 the examination of the witness, the witness was	10 Exhibit No. 2 82 17
11 duly sworn to testify the whole truth concerning	11 Exhibit No. 3 96 3
12 the matters herein;	12 Exhibit No. 4 98 5
13 That the foregoing deposition	13 Exhibit No. 5 147 9
14 transcript was reported stenographically by me,	14 Exhibit Nos. 6 & 7 155 22
15 was thereafter reduced to typewriting under my	15 ***ORIGINAL EXHIBITS RETAINED BY COUNSEL***
16 personal direction and constitutes a true record	16
17 of the testimony given and the proceedings had;	17
18 That reading and signing was requested;	18
19 that the said deposition was taken before me at	19
20 the time and place specified;	20
21 That I am not a relative or employee or	21
22 attorney or counsel, nor a relative or employee of	22
23 such attorney or counsel for any of the parties	23
24 hereto, nor interested directly or indirectly in	24
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1 the outcome of this action.	
2 IN WITNESS WHEREOF, I do hereunto set	
3 my hand of office at Chicago, Illinois, this 16th	
4 day of April, 2017.	
5	
6	
7 Theresa A. Vorkapic	
8 Notary Public, Kane County,	
9 Illinois.	
10 My commission expires 11/6/19.	
11	
12	
13 CSR License No. 84-2589.	
14	
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